

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

FABIAN CARRASCO
Claimant

APPEAL NO: 19A-UI-04165-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 04/14/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 14, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 17, 2019. The claimant participated in the hearing with CTS Language Link Interpreter Monica (11645). Ann Sassman, Human Resources Generalist; Teresa Torres, Human Resources Specialist; Juan Carlo Tahillas, Assistant Manager; and Trenton Kilpatrick, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general maintenance worker for Rembrandt Enterprises from October 10, 2017 to April 15, 2019. He was discharged for exceeding the allowed number of attendance allowances.

The employer uses a no-fault, point-based attendance policy. Employees are allowed nine points in a rolling 12 month period before termination occurs. A full day absence results in one point; an incident of tardiness or leaving early results in .50 point; and a no-call/no-show absence results in three points. The employer issues the employee a written counseling when they reach three points and a written warning when they reach six points. Termination occurs when the employee reaches nine points.

On March 19, 2019, the claimant was absent and properly reported his absence but does not recall the reason for the absence and received one point; on March 21, 2019, the claimant was absent and testified it was his day off and received one point; on April 1, 2019, the claimant was absent and properly reported his absence but does not recall the reason for the absence and received one point; on April 2, 2019, the claimant was a no-call/no-show and testified it was his day off and received three points; on April 8 and April 9, 2019, he was tardy and received

½ point for each day; on April 11 and April 12, 2018, he was tardy and received ½ point for each day; and on April 15, 2019, he called the employer at 4:10 a.m. and said he was ill and would not be in and received one point for a total of nine points and his employment was terminated.

The employer did not issue the claimant the written counseling or the written warning prior to his termination. Assistant Manager Juan Carlo Tahillas spoke to the claimant about his attendance April 3, 2019, but did not issue his warnings in writing and the claimant did not know the conversations were considered warnings. The claimant was not aware his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The employer did not follow its own disciplinary policy because it failed to issue the claimant a written counseling and a written warning when he reached three and six attendance points. Additionally, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Therefore, benefits must be allowed.

DECISION:

The May 14, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn