

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER N REMMICK
Claimant

APPEAL 16A-UI-11112-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IML CONTAINERS IOWA INC
Employer

**OC: 09/18/16
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 7, 2016 (reference 01) unemployment insurance decision that allowed claimant benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2016. The claimant, Heather N. Remmick, did not participate. The employer, IML Containers Iowa Inc., participated through witness Juli Singer. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an operator. This employer operates a plastics manufacturing plant. Claimant was employed from September 10, 2013 until September 16, 2016. She worked from 10:30 p.m. to 7:00 a.m. Mondays through Fridays each week with occasional overtime hours. Her job duties included inspecting plastic parts for defects. The claimant was discharged for absenteeism.

The employer does have a written policy in place regarding absenteeism, which claimant received a copy of when she was hired. That policy requires that employees call in to report an absence at least one hour prior to their shift beginning. Prior to claimant being demoted to operator, she was the lead person on the shift. With that role, claimant was required to call the human resources personnel to notify them as well if she was going to be absent.

This employer does not provide paid sick leave for employees. This employer does provide paid vacation days to employees. In order to use paid vacation days and employee must notify the employer five days prior to the planned absence. Further, if an employee has an absenteeism rate of 5% for a 90-day time period, they will be subject to discipline.

The employer has a progressive disciplinary policy. The policy provides that an employee will receive a verbal warning, a written warning, a final written warning and then will be discharged. Claimant received previous discipline for absentee issues on April 30, 2015; March 29, 2016; June 2, 2016; and September 1, 2016.

On September 16, 2016 claimant was working and became very upset and emotional. She was sobbing and crying due to personal relationship issues. Claimant then told her supervisor that she felt blue and was thinking about committing suicide. Claimant's supervisor called Ms. Singer at home to inform her that the claimant was asking to go home and wanted to know if she would lose her job for leaving early. Ms. Singer informed the supervisor that it was claimant's own choice if she wanted to leave but that she needed to contact her later that same day to speak to her about the incident. Claimant's supervisor on the job felt it was in the best interest of claimant and her co-workers to involve police help due to the way the claimant was acting. Claimant's supervisor called the police to assist with helping her get to the hospital or wherever she needed to go.

Claimant was taken to the hospital by the police and admitted into the emergency room for an overnight visit. Ms. Singer was aware that claimant was taken by the police department from the facility but was not aware that she was admitted into the hospital until after the discharge. Because claimant did not contact Ms. Singer by the close of business on that same day, September 16, 2016, Ms. Singer mailed claimant a letter stating that she was being discharged due to absenteeism. Claimant called Ms. Singer the following Monday, September 19, 2016 and told her that it was not fair to discharge her while she was in the hospital.

Claimant received benefits in the amount of \$2,160.00 for the five weeks between September 24, 2016 and October 22, 2016. Employer did participate in the fact finding interview.

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. Benefits are allowed.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of

employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment.” *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. Excessive absences are not considered misconduct unless unexcused. *Id.* at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Id.* at 558.

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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding “rule [2]4.32(7)...accurately states the law.” The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10 (Iowa 1982). The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins*, 350 N.W.2d at 191 or because it was not “properly reported.” *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness and an incident of tardiness is a limited absence. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer’s interest is not shown and this is essential to a finding of misconduct. *Id.*

In this case the claimant did properly report her final absence. In fact, her supervisor was the one who called the police for help. The absence on September 16, 2016 was due to mental health issues leading to hospitalization. This is an excused absence for illness. Because the final absence was excused, there is no need to examine whether claimant’s past absences were unexcused or excessive as the employer has failed to establish a *current* act of misconduct on which the discharge was based. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The October 7, 2016 (reference 01) unemployment insurance decision allowing benefits is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

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