

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HABTOM N MESFUN
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 22A-UI-03125-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/12/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Habtom N. Mesfun, filed an appeal from the January 10, 2022, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was discharged for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2022. The claimant participated personally. The employer, Seaboard Triumph Foods, LLC, did not participate. The administrative law judge took official notice of the administrative record. CTS Language Link provided Tigrinya language services for claimant.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to and available for work effective December 12, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time on the kill floor from June 2019, until this employment ended on December 9, 2021, when he was discharged.

In the months leading to his discharge, claimant had been having significant health concerns. He had been off work for an extended period in June and July 2021. He maintained contact with the employer's HR department throughout his illness, and provided doctor's notes and updates as requested.

At some point, the employer began applying its attendance policy to claimant's absences. He did not know why it began applying the policy, because his absences were often still related to his medical condition. Each time claimant was absent, he properly notified the employer of his absence, either by notifying the employer ahead of the time his shift started, or by getting permission to leave if he was already at work.

On December 8, 2021, an HR representative told claimant he was accruing a lot of attendance points. The representative indicated the employer still intended to work with claimant to find a solution. Claimant was not issued any disciplinary warnings regarding his attendance. Then, on December 9, 2021, claimant was called into the HR office and was informed he was being discharged because he had accumulated too many points.

Claimant filed a claim for unemployment insurance benefits with an effective date of December 12, 2021. He has filed weekly continuing claims through February 26, 2022. At the time of his discharge, claimant was not under any physician-imposed work restrictions. He has no other barriers to seeking or accepting full-time employment since the time at which he was discharged.

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:

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(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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Excessive absences are not considered misconduct unless unexcused. 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. Iowa Admin. Code r. 871—24.32(7); *Cosper*, 321 N.W.2d at 6; *Gaborit v. Emp't Appeal Bd.*, 734 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. *Gaborit*, 734 N.W.2d at 554. 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. Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d at 10. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not carried its burden of demonstrated that claimant engaged in disqualifying misconduct. No disqualification is imposed with respect to the separation from employment.

The next question is whether claimant is able to and available for work effective December 12, 2021. For the reasons that follow, the administrative law judge concludes that he is able to and available for work, and accordingly, benefits are allowed, provided claimant is otherwise eligible.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871—24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant testified that there were no barriers to seeking or accepting full-time employment. He further testified that he had been diligently seeking full-time employment since this employment ended. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The January 10, 2022, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. The claimant is able to work and available for work effective December 12, 2021. Benefits are allowed, provided claimant is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

March 17, 2022
Decision Dated and Mailed

ar/kmj