

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANTE VALDEZ ZARAZUA
Claimant

SMITHFIELD FRESH MEATS CORP
Employer

APPEAL 21A-UI-02759-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation at Fact-Finding

STATEMENT OF THE CASE:

On January 4, 2021, the employer, Smithfield Fresh Meats Corporation, filed an appeal from the December 24, 2020 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged due to absenteeism and his absences were excused and properly reported. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, March 10, 2021. The claimant, Dante Valdez Zarazua, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Smithfield Fresh Meats Corporation, participated through Becky Jacobsen, Human Resources Manager.

ISSUES:

Was claimant Dante Valdez Zarazua discharged from employment due to disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production worker, from July 21, 2015, until November 2, 2020, when he was discharged due to absenteeism.

Claimant's final absence occurred on October 29, 2020. Claimant called in sick that day. When he reported back to work, he presented medical certification indicating he had gone to the doctor for his illness. He was assessed one attendance point for this absence, which put him over the acceptable threshold and so he was discharged.

The employer maintains a points-based attendance policy. Their policy maintains that an employee will be discharged once he reaches either (a) twelve attendance points or (b) a third final written warning within 24 months. Claimant received three final written warnings within a

24-month period. He was aware that his job was in jeopardy due to his absences, though Jacobsen admits that his absence on October 29 could not be avoided, as he was ill.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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(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* at 192. Second, the absences must be unexcused. *Cosper* 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,” *Higgins* at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10.

An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. In this case, claimant Dante Valdez Zarazua’s last absence was related to properly reported illness or other reasonable grounds. Therefore, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

As claimant’s separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The December 24, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

The issues of overpayment, repayment, and chargeability are moot.



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March 15, 2021
Decision Dated and Mailed

lj/mh