

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MADING A BEC**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL 16A-UI-12384-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
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 filed an appeal from the October 27, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 6, 2016. Claimant participated. Employer participated through division human resources manager Jim Funcheon and human resources section manager Tom Barragan. Employer exhibit one was offered into evidence. Claimant objected to employer exhibit one because he has not received them from the employer. Claimant had a copy of the documents. Claimant's objection was overruled. Claimant exhibit A was admitted into evidence with no objection.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can 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 a production worker from November 15, 2010, and was separated from employment on September 2, 2016, when he was discharged.

The last day claimant performed work for the employer was on April 21, 2016. Claimant applied and was approved for Family and Medical Leave Act (FMLA) leave from April 13, 2016, through October 13, 2016. Claimant Exhibit A. The "Designation Notice" informed claimant that "[p]rovided there are no drastic changes from the information provided by [his] healthcare provider, [his] medical certification will be valid until 10/13/16, at which point [he] will be required to recertify." Claimant Exhibit A. Although claimant's FMLA leave was approved starting

April 13, 2016, he did not start using FMLA leave until April 22, 2016. The employer required claimant to call the employer and report his absences every day he was using FMLA leave. Claimant called the employer every day, starting April 22, 2016, and reported his absences due to FMLA leave until after he was discharged on September 2, 2016.

Prior to August 9, 2016, claimant exhausted his FMLA leave. Employer Exhibit One. On August 9, 2016, the employer mailed claimant a certified letter, return receipt requested, because claimant was still calling off from work and stating he was using FMLA leave. The letter informed claimant that his "FMLA hours have exhausted" and he needed "to provide documentation to cover [his] absences." Employer Exhibit One. Claimant's roommate Emmanuel signed for the letter, but did not give the letter to claimant. Employer Exhibit One. After the employer did not hear from claimant regarding the August 9, 2016 letter, it mailed another certified letter, return receipt requested, dated August 18, 2016 to claimant. Employer Exhibit One. This letter informed claimant that he would "be terminated as a voluntary quit five (5) days from the date of this letter at the end of business hours (3:30pm), since [he had] not reported for work or provided any medical evidence or documentation that [he was] unable to work." Employer Exhibit One. The post office attempted to deliver the letter on two occasions, but was unsuccessful and it was returned to the employer. On September 2, 2016, the employer mailed a certified letter, return receipt requested, to claimant informing him that he was discharged for failing to respond to the five day letter. Employer Exhibit One. The letter was signed for by claimant's roommate Emmanuel. Employer Exhibit One. Claimant received the September 2, 2016 letter.

#### **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.

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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."

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was absent from work from April 22, 2016 until his discharge (September 2, 2016). Claimant properly called the employer to report each absence during this period and stated he was on FMLA leave. 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*, supra; *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). Although claimant's FMLA leave was exhausted prior to August 9, 2016, when his FMLA leave was approved he was informed his "medical certification [would] be valid until 10/13/16[.]" Employer Exhibit One and Claimant Exhibit A.

The employer sent claimant two letters in August 2016 requesting more information regarding his absences and informed him he had five days to respond from August 18, 2016. Employer Exhibit One. Although the employer sent these two letters, and one was signed for, claimant credibly testified he never received the letters. It is noted that it was claimant's roommate that signed for the August 9, 2016 letter. Employer Exhibit One. Claimant never responded to either letter and did not provide any updated medical documentation. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Claimant credibly testified he did not receive either August 2016 letter and because of the language ("medical certification [would] be valid until 10/13/16[.]") in the "Designation Notice" that approved his FMLA leave, he could have reasonably believed he was not going to need to update the employer regarding his medical

status until October 13, 2016. Claimant Exhibit A. Furthermore, claimant continued to call the employer to report his absences every day since April 22, 2016 until he was separated from employment. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act.

Because claimant's absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Furthermore, claimant's failure to contact the employer regarding either August 2016 letter is not disqualifying misconduct because claimant did not receive either letter and he reasonably believed he had until October 13, 2016 to update the employer about his medical status. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The October 27, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs