

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN D VAN SKIKE
Claimant

APPEAL NO: 18A-UI-09597-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 08/12/18
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 filed an appeal from the September 11, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 3, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Amy Weisenborn, store manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit the employment with good cause attributable to the 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: The claimant was employed part-time as a cashier and was separated from employment on April 16, 2018, when she quit in lieu of being discharged. Continuing work was not available.

Had the claimant not quit the employment, the employer would have discharged her for excessive absences. The employer's policy requires employees notify management prior to a shift if they cannot work, and find a replacement. If they find a replacement or bring a doctor's note, the absence is considered excused. The employer has no set number of absences it

allows before discharge. The claimant was provided access to the employer's policies upon hire.

The claimant was previously working 20 hours when the employer reduced her hours to three hours per week in response to the claimant's repeated call-offs due to illness or injury. Then the claimant was issued a warning on March 26, 2018 when she called off her shift on March 24, 2018 for being sick. The final incident occurred on April 14, 2018, when the claimant notified Ms. Weisenborn in advance of her shift that she would be absent due to illness and failed to secure a replacement. She did not furnish a doctor's note to confirm her illness so the absence was unexcused. Ms. Weisenborn asked the claimant to meet with her on April 16, 2018 where she intended to discharge her, but instead the claimant quit in advance of the meeting that day.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,218.00, since filing a claim with an effective date of August 12, 2018. The administrative record also establishes that the employer did not participate in the September 6, 2018 fact-finding interview or make a witness with direct knowledge available for rebuttal.

Brittany Lowery, claims analyst for Thomas and Company/Thomas and Thorngren Inc., the employer's unemployment vendor, was called and a voicemail was provided for her. She did not respond. There is no evidence that the employer attempted to submit written participation in lieu of attending the fact-finding interview. Ms. Lowery did not attend the hearing to explain why she did not respond to the call or voicemail for the fact-finding interview. The employer witness had no information about Ms. Lowery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

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

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In this case, the claimant was scheduled to have a meeting with the employer and would have been discharged had she attended. In essence, the claimant quit within hours of being discharged, and since continuing work would not have been available, had she not technically tendered her resignation, the separation shall be treated as a discharge.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In this case, the employer cited to only two specific absences: March 25, 2018 and April 14, 2018. Both were properly reported and due to illness. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The September 11, 2018, (reference 01) decision is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn