

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAMARIO G WRIGHT**  
Claimant

**UNIPARTS OLSEN INC**  
Employer

**APPEAL 18A-UI-04564-SC**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/25/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lamario G. Wright (claimant) filed an appeal from the April 12, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Uniparts Olsen, Inc. (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held at 1:00 p.m. on May 30, 2018 in Davenport, Iowa. The claimant participated. The employer contacted the Appeals Bureau via telephone on the morning of the hearing and declined to participate. No exhibits were offered into the record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a CNC Machinist/Operator beginning on April 10, 2017, and his last day worked was March 13, 2018. On his last day worked, the new Human Resources person Dawn, discussed the claimant's attendance with him. She stated according to her records he had 25 attendance points. The claimant and Dawn reviewed his absences and determined he only had eight points. The claimant was suspended for one day without pay on March 14.

The claimant was approved to be on vacation from March 14 through March 23. However, Dawn, being a new employee, did not know how to enter the time off in the computer system. The claimant did not report to work on March 15, following his suspension because he was not scheduled to work.

On March 19, Ronny, the head supervisor, told the claimant to report to work. The claimant reported to work and Ronny told him that he was being discharged for a no-call/no-show absence on March 15. He and Ronny discussed the issue and Ronny stated he was being laid off for 90 days but could return to work on June 13.

## 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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

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 the 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). 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 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. The claimant’s unrefuted testimony is that he was approved to use vacation time on March 15 and was not scheduled to work. Because his last absence was properly reported and for reasonable grounds, 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, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The April 12, 2018, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to the claimant.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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