

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS JOHNSON
Claimant

PRO RESOURCES INC
Employer

APPEAL 15A-UI-08211-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/15
Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 17, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2015. Claimant participated. Employer participated through Corporate Administrator, Ashley Greene. Employer's Exhibits One through Four were received.

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: Claimant was employed full time and assigned to perform painting and water removal at Ashley Industrial Molding beginning May 27, 2015, and was separated from employment on June 26, 2015, when he was terminated.

According to employer's attendance policy, during the first 90 days of employment, employees are allowed only three attendance points. Under the policy, a no-call/no-show absence accrues two points. Claimant received a copy of this policy upon hire.

Claimant gave employer a doctor's note excusing him from work from June 10 through June 23, 2015. Claimant mistakenly believed the note excused him through June 25, 2015. Thus, claimant did not call employer or report to work on June 24 or June 25, 2015. Employer did not attempt to call claimant on either day. On June 26, 2015, claimant spoke with employer and learned he had been terminated for accruing four attendance points based on his no-call/no-show absences on June 24 and 25, 2015. Claimant obtained a doctor's note excusing him from work from June 25 through July 12, 2015, and provided it to employer. However, employer upheld claimant's termination due to the fact he did not properly report his absences on June 24 and 25, 2015.

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 § 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. *Casper 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).

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. *Casper* 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." *Casper* at 10. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence consisting of two days is not disqualifying since it does not meet the excessiveness standard. In this case, claimant was absent for two days upon the mistaken believe that he was excused by his doctor's note. If employer had called claimant on June 24, 2015, he would have been able to act sooner in procuring the doctor's note excusing further absences. However, employer did not contact claimant until it had already made the decision to terminate his employment. The employer has not met the burden of proof to establish claimant intentionally disregarded a duty to his employer.

An issue remains as to whether claimant is able and available to work and when he became able and available to work.

DECISION:

The July 17, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. This matter is remanded for a determination on the issue of whether claimant is able and available for work.

Christine A. Louis
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Decision Dated and Mailed

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