

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TODD ZIESER
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL 16A-UI-10162-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/21/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Todd Zieser (claimant) filed an appeal from the September 7, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination Ryder Integrated Logistics, Inc. (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on October 17, 2016. The claimant participated personally. The employer participated through Human Resources Specialist Emily Rummells and was represented by Edward Wright of Talx UCM Services.

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 Forklift Operator/Material Handler beginning on December 6, 2015, and was separated from employment on August 17, 2016, when he was discharged. The employer has an attendance policy that states once an employee obtains nine attendance points he or she is subject to discharge. Employees are allowed up to three free incidents of tardiness that do not exceed two hours. Once those are used, the employee starts to accrue points on his or her tardiness.

On December 16, 2015, the claimant earned one point when he missed work due to personal reasons. On March 7, 2016, the claimant used one of his free tardies when he was 20 minutes late due to traffic. On March 31, April 30, and May 13, 2016, the claimant earned one point for each day he missed due to personal reasons, which for two of the days included oversleeping. On May 16 and 17, 2016, the claimant was tardy by one minute each day and used one of his free tardies. On May 23, 2016, the claimant earned a half point when he was tardy by 55 minutes due to personal reasons. On May 29, 2016, the claimant left work five hours early as his godfather had a heart attack and the claimant felt he needed to go pick up his godfather's son to take him to the hospital. On July 1, 2016, the claimant missed work as his aunt passed away. On July 7, 2016, the claimant was five hours late to work as he overslept.

On July 11, 2016, the claimant received a written warning related to attendance as he had accrued seven and a half points. On July 18, 2016, the claimant was two minutes late to work and used his third free tardy. On July 20, 2016, the claimant missed a full day of work due to personal reasons. On July 25, 2016, the claimant received a final written warning as he was at eight and half points. He knew at that time any additional attendance points would result in his discharge. On August 16, 2016, the claimant was three minutes late due to traffic. He was discharged the following day due to a violation of the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 regulations define misconduct:

“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.

Iowa Admin. Code r. 871-24.32(1)a. 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); 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. 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*.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism due to oversleeping or personal reasons, is considered excessive. Benefits are withheld.

DECISION:

The September 7, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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