

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM C DOLLEN**  
Claimant

**APPEAL NO. 17A-UI-05623-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACKSON RECOVERY CENTERS INC**  
Employer

**OC: 05/07/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

Jackson Recovery Centers, Inc., the employer, filed a timely appeal from a representative's decision dated May 24, 2017, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa on June 16, 2017. Claimant participated. The employer participated by Ms. Sharon Miller, Human Resource Director, and Ms. Jennifer Crew, Clinical Supervisor. Employer's Exhibits 1 through 18 were admitted into the record.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Adam C. Dollen was employed by Jackson Recovery Centers, Inc. from November 28, 2016 until May 8, 2017, when he was discharged by the employer. Mr. Dollen was hired to work as a full-time therapist providing treatment to individuals with substance abuse disorders and other related issues. Mr. Dollen was paid by the hour and his immediate supervisor was Jennifer Crew.

Mr. Dollen was discharged from his employment on May 8, 2017, when the employer believed that Mr. Dollen had left work on three occasions without properly notifying company management that he was leaving or the reason. The employer also believed that Mr. Dollen had not provided the required notice to patients on those days to inform them that their appointments with the claimant would not take place. The employer's preferred method of notification is for the employee to directly contact their supervisor when they are going to be absent or leave work early. The employer prefers that the therapist contact patients to inform the patients if the appointment is not going to be held.

In April 2017, Mr. Dollen had been hospitalized for tests after showing the signs and symptoms of a serious cardiac condition. Mr. Dollen had been absent from work or left early because he was not feeling well. On April 17, 2017, the company's office manager suggested that Mr. Dollen go home because he appeared to be seriously ill. The claimant was hospitalized overnight due to a possible heart attack on that date. On April 24, 2017, Mr. Dollen called off

work after experiencing an anxiety attack in the company parking lot. The claimant left and went to an emergency room. On May 2, 2017, Mr. Dollen left work early after he became ill at work. He notified Kim Neimier, the manager of the facility, of the reason that he was leaving early that day.

The final incident that resulted in the claimant's discharge took place on May 4, 2017. On that date, Ms. Miller, the company's Human Resource Director, had traveled from Sioux City, Iowa to Dennison, Iowa and planned to meet with the claimant that afternoon to counsel him about his absence that had taken place on May 2, 2017. The claimant's immediate supervisor, Ms. Crew, was also present along with a number of other employees. Mr. Dollen became ill during the team meeting that morning and told his supervisor, Ms. Crew, that he was becoming ill. Ms. Crew was familiar with the claimant's medical issues and suggested that Mr. Dollen leave the meeting because of his illness. Mr. Dollen left the meeting and while doing so called his wife. The claimant's wife then called the claimant's physician, who instructed Mr. Dollen not to wait for his afternoon appointment with the doctor, but to immediately proceed to an emergency room. The claimant followed those medical instructions. He did not further contact Ms. Crew because he believed that she was aware that he had gone home ill as she had instructed him to leave the meeting when he told her that he was sick. Later that day, the claimant was contacted by another therapist at his doctor's office and verified that he had gone home due to illness.

Ms. Miller, who had traveled from Sioux City to give the claimant a disciplinary action, saw Mr. Dollen as he left the team meeting that morning. Mr. Dollen did not speak to Ms. Miller because he was occupied trying to contact his doctor. Mr. Dollen did not personally notify the patients that were scheduled for appointments on the days in question because it had been the usual practice for patients to be scheduled and notified of any changes by the local office managers and Mr. Dollen had relied upon that procedure to follow.

The claimant was discharged on May 8, 2017, because he had been absent too often and there had been some confusion about the claimant's absences and the reasons for them. The employer believed Mr. Dollen should have used a more direct method of notifying his immediate supervisor and should have personally notified patients of any appointment changes.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "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).

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 job disqualifying misconduct. *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 the claimant but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Department of Job Service*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Department of Job Service*, 425 N.W.2d 679 (Iowa App. 1988). The focus is on deliberate, intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See IAC 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See IAC 871-24.32(8). Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused, provided the employee has complied with in policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The Supreme Court of Iowa in the case of *Roberts v. IDJS* 357 N.W.2d 218 (Iowa 1984) and in *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36 (Iowa Ct. of Appeals 1992) held that in addition to considering the employer's policy on providing notice other factors must be considered such as the circumstances of a sudden illness, the nature of the reason for the

absence, and the capacity of the individual to properly report the absence under the circumstances.

In the case at hand, the employer was aware that Mr. Dollen was having medical issues and that he had on more than one occasion been unable to report for work or to finish his work shift for medical reasons.

Based upon the evidence in the record, the administrative law judge concludes that because of the circumstances at hand, Mr. Dollen on each occasion reasonably believed that adequate notice had been given to the employer of the reason that he needed to leave work, or in the alternative, the employer was already aware of the medical condition as the employer had suggested to Mr. Dollen that he appeared sick and should leave if necessary.

During the final incident that prompted the claimant's discharge from employment, the claimant had advised his supervisor that he was again feeling ill and the supervisor confirmed that Mr. Dollen should leave. The claimant's attention was then focused on contacting his doctor for instructions. The claimant further believed that adequate notice had been given that day because the other therapist had called the doctor's office and Mr. Dollen had confirmed to the therapist that he had gone to the doctor's office after becoming ill at the team meeting.

The question before the administrative law judge in this case, is not whether the employer had a right to discharge Mr. Dollen for these reasons, but whether the claimant's discharge was disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Dollen may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the claimant's last absence was excused because it was due to illness and that the claimant had reasonably believed that he had provided adequate notice to the employer. Mr. Dollen did not personally notify patients of the appointments that might have been changed because the standard practice at the centers was for the center's manager to do the scheduling and re-scheduling of patients and Mr. Dollen had followed that practice in the past. The evidence in the record does not establish intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 24, 2017, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs