

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JIM G BARKER
Claimant

APPEAL NO. 15A-UI-11086-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC
Employer

OC: 09/06/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Advanced Drainage Systems Inc. filed a timely appeal from a representative's decision dated September 24, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 19, 2015. Claimant participated. The employer participated by Mr. Jeramy Magley, Plant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of job insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge, finds: Jim Barker was employed Advanced Drainage Systems Inc. beginning in the year 2011 when the company that Mr. Barker had previously worked for was bought by new owners. Mr. Barker was employed as a full-time maintenance technician and most recently was assigned to work 1:00 a.m. until 9:00 a.m. The claimant was paid by the hour. His immediate supervisor was Brian Hill.

Mr. Barker was discharged on July 29, 2015, when he exceeded the permissible number of attendance infraction points allowed under company policy. On that day, the claimant called in and notified the company that he would be absent for his work shift that was to begin approximately six hours later. Mr. Barker left messages with his supervisor as well as other individuals in management to ensure that they had received notice of his impending absence.

The company has a no-fault type attendance policy that provides for the discharge of employees who accumulate seven infraction points within a rolling twelve-month period. Employees are given one infraction point for each absence and one-half infraction point for each tardiness. An employee who is absent for more than one day due to illness is subject only to a one-point infraction if the employee provides a doctor's note confirming that all the consecutive

days of absence were for the same medical reason. Mr. Barker was aware of the company policy and had signed an acknowledgement of its receipt.

Mr. Barker called in to the employer for four or more days during the week preceding his discharge. The claimant followed the company's call-in procedure when calling off work. After the claimant had been off work for several days in a row and had been discharged on July 29, 2015 via letter, the claimant then went to his doctor. Mr. Barker testified that his doctor then confirmed that the claimant had been ill and unable to report for scheduled work.

It is the employer's position that the claimant was aware of the company's attendance policy and had been excessively absent. It is the employer's belief that the claimant did not provide notice of his impending absence on the date of his discharge, July 29, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. App. 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 871 IAC 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 871 IAC 24.32(8). Absences related to issues of personal responsibility, such as transportation and oversleeping are considered unexcused. Absence related to illness are considered excused provided the employee has complied with the employer's policy regarding notify the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The evidence in the record establishes that Mr. Barker was aware of the company's call-in requirement to report impending absences and that the claimant reported his impending absence for July 29, 2015 by calling and leaving more than one message for the employer in the hours leading up to the beginning of his 1:00 a.m. start time on July 29, 2015. The evidence in the record also establishes that the majority of the claimant's attendance infractions during his most recent twelve months of employment with the company were due to illness and were properly reported.

The question before the administrative law judge in this case is not whether the employer has a right to discharge Mr. Barker for these reasons, but whether the discharge took place under disqualifying conditions under the Employment Security Law. While the decision to terminate Mr. Baker may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant's absences were due to illness and were properly reported. Under those circumstances, the absences are considered excused and did not constitute misconduct in connection with the claimant's work sufficient to warrant the denial of unemployment insurance benefits. The administrative law judge finds the claimant's testimony with respect to leaving messages for the employer to be credible and finds that the evidence in the record supports the claimant's contention that he was ill and unable to report for scheduled work.

DECISION:

The representative's decision dated September 24, 2015, reference 01, is affirmed. The claimant is discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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