

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEAL E KEASLING

Claimant

APPEAL 17A-UI-01025-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REVSTONE CASTING FAIRFIELD LLC

Employer

OC: 12/25/16

Claimant: Respondent (2)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Revstone Casting Fairfield, LLC (employer) filed an appeal from the January 17, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon the determination it discharged Deal E. Keasling (claimant) for excessive absenteeism due to illness which was properly reported and is not disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resources Manager Terra Greiner. Official notice was taken of the administrative record, specifically the fact-finding documents and the claimant's database readout (DBRO).

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits?

Can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

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 Core Cleaner and Boarder beginning on October 29, 2007, and was separated from employment on December 21, 2016, when he was discharged.

The employer has an attendance policy that allows for ten attendance points before termination. Employees who are going to miss work without prior approval are required to contact the employer using a call-in line before the start of shift. The employer's policy does not require employees to provide a reason for their absence. However, employees who miss consecutive days due to illness have 12 days after they return to work to provide a doctor's note and, if accepted, the absences are all counted as one point. Employees also have the ability to request a leave of absence, either with consecutive days off or intermittent leave, by contacting

Human Resources Manager Terra Greiner. When an employee is getting close to termination level, he receives a point letter notifying him that he is reaching his limit.

During 2016, the claimant had two types of leave due to issues with his child. He requested and was granted intermittent leave beginning June 2016 and a sustained leave from November 1 through December 9, 2016. He received these leaves by contacting Greiner and providing documentation. The claimant did not accrue any points for the absences during or attributable to his approved leave.

The claimant missed a day of work on August 29, 2016 in which he notified the employer he would not be at work. The claimant missed work October 24 through October 26, 2016 and called in each day. The only message he left was that he would not be at work and did not provide any other details related to his absence. The claimant missed work on October 31, 2016. He notified the employer, but did not provide the reason he was missing work. The claimant missed work December 14 and 15, 2016. He notified the employer, but did not state the reason he was missing work.

The claimant missed work December 19 through December 21, 2016. He notified the employer but did not state why he needed the time off. He did not request a leave of absence. Greiner contacted the claimant on December 21, 2016. The claimant asked if she was calling to discharge him and did not say anything at that time about being ill.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,611.00, since filing a claim with an effective date of December 25, 2016, for the seven weeks ending February 11, 2017. The administrative record also establishes that the employer did provide written documentation that, without rebuttal, would have resulted in disqualification.

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 claimant told the fact-finder that his absences were related to illness. However, he did not report to the employer at any time that his absences were related to illness. He also did not submit documentation to have his points reduced due to illness after consecutive days of absenteeism and he did not request a leave of absence due to illness even though he knew how to do so. The employer has established that the claimant was aware 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, is considered excessive. Benefits are withheld.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.7. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant

and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. An employer is deemed to have participated with written documents if those documents include the specific dates of misconduct and the specific rule or policy that the claimant violated. Iowa Admin. Code r. 871-24.10.

In this case, the claimant has received benefits but was not eligible for those benefits. The employer sent in documents for the fact-finding that detailed the days the claimant missed and its attendance policy. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The January 17, 2017 (reference 01) unemployment insurance decision is reversed. 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. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,611.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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