

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AHMED DHAHIR
Claimant

APPEAL 24A-UI-03956-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTRICAL POWER PRODUCTS INC
Employer

OC: 03/17/24
Claimant: Appellant (5)

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

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.25(38) – Discharge Prior to Effective Date of Resignation

STATEMENT OF THE CASE:

The claimant, Ahmed Dhahir, filed an appeal from the unemployment insurance decision dated April 16, 2024, (reference 02), that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on May 6, 2024. The claimant participated personally. The employer, Electrical Power Products Inc., participated through Human Resources Manager Amanda Haugen. The Employer's Exhibits 1 – 3 were admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant voluntarily quit his employment with good cause attributable to the employer.

Whether the claimant was discharged from employment prior to the effective date of his resignation for any disqualifying reason.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a full-time engineering specialist for Electrical Power Products, Inc. from June 13, 2022, to March 18, 2024, when he was discharged. The claimant worked from approximately 8:00 a.m. to 4:30 p.m. Monday through Friday.

On August 8, 2023, the claimant's wife gave birth to their second child. Prior to his child's birth, the claimant requested a four week medical leave of absence, which the employer granted. The claimant returned to work sometime in mid-September 2023.

At the beginning of each fiscal year, the employer gives all employees three weeks of PTO to use throughout the year. During the fall and winter of 2023, the claimant used his PTO to stay home with his children and take the children to medical appointments. By mid-December 2023, the claimant had exhausted his three weeks of PTO.

Despite having exhausted his PTO, throughout January and February 2024, the claimant frequently arrived to work late, left work early, and, on several occasions, took unpaid absences to stay home and watch his children. For this reason, on March 1, 2024, the employer issued the claimant a 30-day Performance Improvement Plan (PIP). The PIP period began March 4 and ended March 29, 2024. During that period, the claimant was required to arrive to work on time 90% of days worked and to work 95% of his work hours. The PIP warned the claimant, "Should you fail to make progress or should your performance or behavior decline during the PIP period, you may be terminated before its conclusion."

Shortly after being issued the PIP, the claimant asked his supervisor if he could take unpaid absences on March 13 and 14, 2024. The claimant's supervisor declined the claimant's request and informed the claimant that he could not take any unpaid absences during the 30-day PIP period.

On March 7, 2024, upset about being placed on a PIP, the claimant emailed the employer stating, "I'm writing this letter to inform you that I wish to resign from my position as engineering specialist with [the employer] effective two weeks from today's date of 3/7/2024." The employer accepted the claimant's resignation.

On March 7 and 12, 2024, the claimant arrived to work late. On March 13, 2024, the claimant was absent from work and he did not call and notify the employer that he would be absent. The next day, March 14, 2024, the claimant did not arrive at work until the afternoon and he had not called and informed the employer that he was going to be late. On March 18, 2024, the employer called the claimant into a meeting and informed the claimant that his employment was being terminated effective immediately due to excessive unexcused absences and tardiness in violation of the employer's attendance policy and the claimant's 30-day performance improvement plan.

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 Code section 96.5(2)a and (d) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(9) Excessive unexcused tardiness or absenteeism.

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. *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 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).

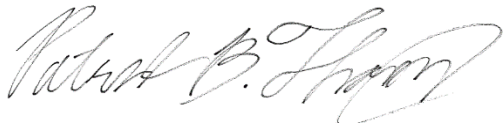
The employer must prove two elements to establish misconduct based on absenteeism. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, 321 N.W.2d at 9; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191. When a claimant does not provide an excuse for an absence, the absence is deemed unexcused. *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003). 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.

Although the employer terminated the claimant prior to the effective date of his resignation, the employer has credibly established that the claimant repeatedly missed work and arrived late for reasons other than personal illness. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The claimant's final absence on March 13, 2024, was not excused, as the claimant did not call and notify the employer that he was going to be absent from work. The claimant's final "no call, no show" absences, in combination with his history of unexcused absences and tardiness after being placed on a PIP, is considered excessive. As such, the administrative law judge concludes that the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The April 16, 2024, (reference 02) unemployment insurance decision is modified with no change in effect. The claimant did not voluntarily quit his employment, but was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the March 18, 2024, separation date, and provided he is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

May 15, 2024
Decision Dated and Mailed

PBT/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.