

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JACOB C HEINZ**  
Claimant

**BARILLA AMERICA INC**  
Employer

**APPEAL 15A-UI-08140-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/19/14**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 16, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2015. Claimant participated. Employer did not participate.

**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: Claimant was employed full time as a package operator from May 4, 2015, and was separated from employment on June 2, 2015, when he was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that new employees that are in within their first 90 days of employment are on probation and will be warned on a first occurrence, then a point on the second occurrence, and then a point plus discharge on the third occurrence. Each absence is one point and a tardy or leaving early is a half of a point. The policy is a no-fault attendance policy; if an employee misses one day of work, even with a doctor's note excusing them, the employee still receives a point. Claimant would work 12-hour shifts with two days off between blocks of shifts. If an employee missed an entire block of shifts, this was just considered one occurrence. Claimant was made aware of the employer's policy through orientation. The policy also provided that if an employee was going to miss work he was to call the employer and leave a message.

Claimant injured his back outside of work on June 4, 2015. Claimant went to the doctor on June 5, 2015 and obtained a doctor's note excusing him from work until June 8, 2015. Claimant was scheduled to work June 5, 2015, June 6, 2015, and June 7, 2015. Claimant followed the call-in procedure and left a message on each day. On June 5, 2015, claimant also called human resources and informed them of his injury and his doctor's note. The employer told

claimant they would not take his doctor's note. Claimant did not work those three days. Claimant received a warning for his absence.

Claimant's next scheduled shifts were June 10, 2015 and June 11, 2015. Claimant did not work those days either. Claimant followed the call-in procedure for those days. On June 10, 2015, claimant again called human resources. Claimant was informed by the employer that if he missed another shift he would be discharged.

The final incident occurred when the claimant was absent on June 15, 2015 from work. Claimant testified he was still suffering from the back injury. Claimant did not provide the employer with a doctor's note. Claimant testified that on June 5, 2015, he had been told by the employer that doctor's notes would not be accepted. Therefore, claimant did not obtain a doctor's note to show he could still not work. Claimant did testify he could have obtained notes from the doctor excusing him from work, but he knew the employer would not accept them so he did not want to waste the money to obtain a note that could not be used.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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(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). 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) (emphasis added); 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."

Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. 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. The employer has a no-fault point attendance policy. Once a probation employee has three occurrences, they are discharged. Under the employer's no-fault attendance policy, claimant had three occurrences during his probationary period.

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 employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

Claimant testified he properly documented his first absence by obtaining a doctor's note excusing him from work until June 8, 2015, and offering to provide it to the employer. Claimant was told by the employer that doctor's notes do not matter and claimant still received his first warning. Claimant clearly tried to provide the employer notice of why he was absent. Claimant stopped getting doctor's notes, because the employer refused to accept them; however, claimant continued to be unable to work from his injury. Claimant did properly follow the employer's call-in procedures and reported his next absences. Because his absences were otherwise related to properly reported injury or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has not met the burden of proof to establish misconduct. Benefits are allowed.

**DECISION:**

The July 16, 2015, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/css