

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRENCE D HUNT
Claimant

MENARDS
Employer

APPEAL 16A-UI-08328-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/10/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for repeated tardiness. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2016. The claimant Terrence Hunt participated and testified. Witness Little Ninja Bertha was also present on behalf of the claimant but did not testify. The employer Menards 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 team member in the lumber department from April 22, 2016, until this employment ended on July 7, 2016, when he was discharged.

Claimant was discharged after he accumulated too many attendance points under the employer's attendance policy. The employer's policy provides that employees are given a written warning after accumulating eight points, a suspension at nine points, and termination after accumulating ten points. Employees were assessed five points for each no-call/no-show and one point for each tardy. Tardies and absences are automatically registered into the employer's computer system when an employee swipes or fails to swipe their badge to clock in.

Upon being hired employees are directed to go on to the employer's online system to check their schedules. We claimant was hired he was told about the online system, but no one showed him how to work the app he needed on his phone to view his schedule. Claimant attempted to figure out how to access the system himself, but when he could not went in to the employer for help. The employer showed claimant how to download and access the app, including his schedule, but also informed him he had missed his first shift, resulting in the accumulation of five points. Claimant was later assessed three more attendance points on

various occasions when he returned from break late. Claimant testified each time he returned late from break, he was late by less than two minutes. Claimant was issued a written warning regarding his attendance at this time and was advised that receiving two additional points would result in termination.

On July 3, 2016, claimant got onto his phone to check his schedule for the following day. Claimant mistakenly believed he was scheduled to work 2:00 p.m. to close on July 4. In reality, claimant misread the schedule and was supposed to work from 7:00 a.m. to 2:00 a.m. on July 4. When claimant showed up to work at 2:00 p.m. his coworkers informed him that he was supposed to be in earlier that day. Claimant went to his supervisors to explain what had happened, but they told him it was out of their hands. They explained the computer system automatically registered him as a no-call/no-show and sent his points information on to corporate human resources for review. Three days later, claimant was notified his employment was terminated for exceeding the allowable number of points.

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.

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.

871 IAC 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). Excessive absences are not considered misconduct unless unexcused. 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*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Absences must be both excessive and unexcused to result in a finding of misconduct. Claimant's first absence was for a no-call/no-show on his first shift. Upon being hired claimant was told about obtaining his schedule online, but was not shown how to do this. Claimant unknowingly missed his first shift, as he was unable to figure out how to obtain his schedule. By the time someone at the employer was able to assist him, he missed his first shift. Claimant's first absence was due to no fault of his own and therefore is excused. While claimant's three tardies assessed points under the employer's system, they are so negligible that are not considered unexcused absences for the purposes of unemployment insurance benefits. Claimant's final absence was because he failed to show up to work after misreading the schedule. 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. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Accordingly, benefits are allowed.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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