

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY T MCSPAREN
Claimant

APPEAL 16A-UI-10912-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RELCO LOCOMOTIVES INC
Employer

**OC: 09/11/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 5, 2016 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 31, 2016. The claimant, Zachary T. McSparen, participated personally. The employer, Relco Locomotives Inc., was represented by Attorney Debra Pettit and witness Tim Ash. Employer's Exhibits 1 through 5 were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mechanic. He was employed from January 26, 2015 until September 8, 2016.

The employer has a written policy in place regarding absenteeism which provides that an employee may be subject to discipline if they are absent and not on leave. See Exhibit 5. The employer's policy provides that if an employee has a personal or family situation/emergency and needs to take leave even though no paid leave is available, they can take unpaid leave. Claimant was made aware of the policy when he received a copy of the policy. Employees are given one work week (five days) of level one unpaid leave and one work week (five days) of level two unpaid leave. See Exhibit 5.

Claimant was absent on the following dates: January 5, 2016; January 6, 2016; February 12, 2016; March 1, 2016; March 2, 2016; May 31, 2016; June 9, 2016; June 27, 2016; July 6, 2016; July 12, 2016 (1/2 day); July 20, 2016 (1/2 day); and September 6, 2016. Claimant did properly report all of these absences by calling into his employer prior to his scheduled shift start time.

Claimant was ill on September 6, 2016 and visited a doctor for his illness on this date. Claimant brought in a doctor's note and delivered that to his supervisor when he reported to work the following day.

During the course of his employment claimant received a written discipline on July 14, 2015 and a suspension on December 1, 2015. See Exhibits 1 and 2. Claimant was discharged due to his absence on September 6, 2016.

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(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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment.” *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. Excessive absences are not considered misconduct unless unexcused. *Id.* 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. *Gaborit v. Emp’t Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation *is not essential* to a determination that an absence due to illness should be treated as excused. *Id.* at 558 (emphasis added).

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.” 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*, 350 N.W.2d at 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10 (Iowa 1982). 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.” *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

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. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but

not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Id.*

The material facts in this case are undisputed. Claimant was absent on September 6, 2016 due to illness, which he did properly report to his employer. When claimant was discharged there was no current act of misconduct. There must be a current act of misconduct to disqualify the claimant from receiving benefits. In this case, there was none. Because the final incident was not a current act of misconduct, it is unnecessary to review previous dates of absenteeism.

The employer has failed to establish that the claimant was discharged for a current act of job-related misconduct which would disqualify him from receiving benefits. Benefits are allowed.

DECISION:

The October 5, 2016 (reference 01) unemployment insurance decision denying benefits is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

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