

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
CHRISTOPHER A HARRIS Claimant	APPEAL NO: 12A-UI-05420-DT
JACOBSON STAFFING COMPANY LC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 10/02/11 Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jacobson Staffing Company, L.C. (employer) appealed a representative's April 30, 2012 decision (reference 03) that concluded Christopher A. Harris (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2012. The claimant participated in the hearing. Susan Francis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on January 21, 2011. His final assignment began on October 13, 2011. He worked full time doing parts packaging and operating a forklift at the employer's affiliated company's Mt. Joy/Davenport, Iowa warehouse. His last day on the assignment was March 27, 2012. The assignment ended because the business client determined to end the employment. The reason asserted was excessive absenteeism.

The claimant had been absent due to illness on February 1; on March 1 and March 2 he was off for personal/family reasons for which he had requested and been granted approval to be off several weeks in advance. Likewise, he was absent on March 8 for a court date for which he had requested and been granted approval to be off several weeks in advance. The affiliated company had approved these absences but had failed to inform the staffing company branch of the business. The claimant had never been given any warnings for his absences.

On March 28, March 29, and March 30 the claimant was absent due to illness. He called in twice each day, once before his 4:00 a.m. to inform the third shift supervisor, and again at about 6:00 a.m. to inform the first shift supervisor. On March 30 the operations manager of the affiliated company contacted the staffing division and informed the employer that the claimant's assignment was to be ended due to his attendance. The employer's policies indicate that an employee is to contact both the business client and the staffing company; however, all of the other attendance questions were controlled by the affiliated company, and the claimant had not been in the practice of separately and additionally contacting the staffing company.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. 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. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). In this case, the employer asserts that the reason for the final absences was not properly reported as the claimant did not separately contact the staffing division as the employer. However, it is clear that the claimant's failure to separately report his absences to the staffing division were due to a reasonable belief on his part that communicating to the related entity for which he was performing the work was substantial compliance with the requirement. Further, at least in part

because the affiliated company was not communicating to the staffing division as it should have been, the claimant had not previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). Because the final absence was related to properly reported illness 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 failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 30, 2012 decision (reference 03) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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