

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN D PIGMAN
Claimant

HOLLAND CONTRACTING CORP
Employer

APPEAL 15A-UI-08161-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/04/15
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 13, 2015, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 10, 2015. Claimant did not participate. Employer participated through Human Resource Manager and Corporate Secretary, Mandy Mikes. Employer's Exhibits A through G were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a general laborer from June 16, 2014, and was separated from employment on June 22, 2015, when he was terminated.

Claimant was assigned to work Monday through Friday and some Saturdays based on business demand. Claimant is not able to drive, so his co-worker picked him up for work each day.

Employer's policy on absences requires employees to notify their supervisor by 7:00 A.M. if they are going to be absent from work. The policy also states that, "An absence of two consecutive workdays without notifying your supervisor may result in termination." The policy is contained in employer's employee handbook. Claimant received a copy of the handbook when he began his employment.

On Friday, June 19, 2015, claimant did not report to work or call to report his absence. On Saturday, June 20, 2015, claimant did not report to work or call to report his absence. Claimant was aware that he was required to work that day. On Monday, June 22, 2015, claimant did not report to work or call to report his absence. Later that morning, claimant called human resource manager Mandy Mikes. Mikes asked claimant why he had been absent from work. Claimant stated that no one had come to pick him up for work. After Mikes disputed that information, she asked claimant why he did not call employer sooner. Claimant stated he had not called employer earlier because his phone was in a lake. Mikes informed claimant employer was treating his absences as a voluntary quit and sent him a certified letter stating the same.

The administrative record reflects claimant has not received any payments for unemployment benefits since his separation date of June 22, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Since employer did not have a written policy stating three consecutive no-call/no-show absences are considered job abandonment in accordance with the rule, the separation was a discharge and not a quit.

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." 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*.

A failure to report to work without notification to the employer is generally considered an unexcused absence. In this case, claimant failed to report to work without notification to the employer on three consecutive dates. Even if claimant was absent because he did not have transportation, his absences were not excused. Claimant also failed to report his absences for a reason related to personal responsibility, which is also unexcused. Claimant's absences were unexcused and excessive under the law.

DECISION:

The July 13, 2015, (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has not been overpaid unemployment insurance benefits.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/mak

NOTE TO EMPLOYER:

If you wish to change the address or contact person of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY