

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUE G SLEH
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL NO. 14A-UI-04352-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/30/14
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 21, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 15, 2014. Claimant participated personally. Employer participated by Steve Sesterhenn. Claimant's Exhibits 1-3 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired on July 12, 2010. Claimant last worked for employer on March 31, 2014. His employment with Allen Memorial Hospital was as an EVS Associate, with housekeeping duties.

Employer discharged claimant on April 3, 2014 because of accrued disciplinary problems. Claimant accrued eight absences and one performance violation in a rolling calendar year beginning April 23, 2013. He received Discipline Action Notices after he had accrued six absences in the rolling year period, so he was aware of his employment status at all times.

The final act which led to his separation was an absence from work on February 28, 2014. Both sides agree that this absence was for a medical appointment as claimant had ongoing health problems surrounding his high blood pressure. Claimant attempted to set up the appointment outside of work hours, but could only be rapidly seen by medical staff during his shift hours. While claimant continued to work in the days preceding his appointment, he believed it necessary to see the doctor as soon as possible, knowing this could lead to his job termination. Claimant did not know that the hospital had recently set up a clinic which could have handled his situation at any time. Additionally there was confusion as to workplace regulations concerning missing a part of a shift for medical appointments.

REASONING AND CONCLUSIONS OF LAW:

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(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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, even if the last absence is seen as unexcused, it is the only unexcused absence brought to the hearing. The evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absences.

The last incident, which brought about the discharge, fails to constitute misconduct because even if it is seen as an unexcused absence, it is an isolated, unexcused incident. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 21, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs