

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MELISSA HANLINE**

Claimant

**AGRI STAR MEAT & POULTRY LLC**

Employer

**APPEAL 16A-UI-13592-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**

**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Absenteeism  
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 December 12, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon its failure to show misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 13, 2017. The claimant Melissa Hanline participated and testified. The employer Agri Star Meat & Poultry participated through Payroll/Human Resource Assistant Laura Roney. Employer's Exhibits 1 through 3 were received into evidence.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

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

Can any 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 parts clerk from March 18, 2014, until this employment ended on November 17, 2016, when she was discharged.

On November 16, 2016, claimant called in to work sick. The employer's policy states that employees should call in at least an hour prior to their scheduled shift if they are going to be absent. Claimant called in at 6:16 a.m. for her 7:00 a.m. shift. (Exhibit 3). According to claimant she called in as soon as she realized she was too sick to go to work. This absence put claimant over the 12 attendance points in a rolling calendar allowed under the employer's attendance policy. Prior to this absence, on May 12, 2016, claimant was given a written

warning for attendance advising her that the further accumulation of points may result in termination. (Exhibit 2). Claimant was terminated on November 17 for her November 16 absence. (Exhibit 1).

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 27, 2016. The claimant filed for and received a total of \$1,668.00 in unemployment insurance benefits for the weeks between November 27, 2016 and January 7, 2017. Both the employer and the claimant participated in a fact finding interview regarding the separation on December 9, 2016. The fact finder determined claimant qualified for benefits.

### **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. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

Claimant missed work on November 16, 2016 because she was sick. Claimant called in to report her absence as soon as she realized she was too sick to report to work and within a reasonable time frame. Claimant was terminated based on her November 16 absence. Because her last 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. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The December 12, 2016, (reference 01) unemployment insurance decision is affirmed. 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. The issues of overpayment and participation are moot.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/