

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAMIE ABERI ILAYA
Claimant

APPEAL 21A-UI-02814-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC
Employer

OC: 08/30/20
Claimant: Respondent (1)

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

Employer filed an appeal from the December 24, 2020, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2021. Claimant did not register for the hearing and did not participate. Employer Advanced Drainage Systems, Inc. participated through plant manager Jeremy Magley. The administrative law judge took official notice of the administrative record.

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a line operator from October 2, 2018, and was separated from employment on August 28, 2020, when she was terminated.

The employer has a no-fault attendance policy, which designates point values to attendance infractions. An employee is subject to discharge if they incur seven points within a twelve-month period. Employees are also expected to notify the employer by telephone at least two hours prior to a shift if they are unable to work.

The employer assessed points to the claimant based upon the following properly reported absences:

October 19, 2019: absent (illness) (1 point)
January 9, 2020: late (illness) (½ point)

January 11, 2020: absent (illness) (1 point)
January 21, 2020 late (car problems) (½ point)
January 22, 2020: left early (illness) (½ point)
February 19, 2020: absent (illness) (1 point)

On February 24, 2020, employer imposed an additional disciplinary point because the claimant received three verbal warnings in the previous twelve months. The final absence was on August 24, 2020, when claimant arrived late. She received ½ point. In addition, the employer imposed an additional disciplinary point on August 24, 2020, because the claimant received two written warnings in the previous twelve months. On August 28, 2020, employer discharged claimant for accumulating seven points.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$11,426.00, since filing a claim with an effective date of August 30, 2020, for the 27 weeks ending March 6, 2020, and Lost Wages Assistance (LWA) benefits in the amount of \$300.00 for the one week ending September 5, 2020. Employer did participate in the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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(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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, the claimant had five properly reported absences due to illness. Those absences would be excused based upon the reason and because the claimant properly reported. The claimant's absence on January 21, 2020 would be considered unexcused based upon the reason. The claimant therefore had one unexcused absences before discharge. Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Here, the employer has failed to establish the claimant was discharged for excessive unexcused absenteeism. One unexcused absence is not disqualifying since it does not meet the excessiveness standard. Therefore, the administrative law judge concludes the employer may have good business reasons to discharge the claimant but has failed to meet its burden of proof of establishing the claimant was discharged for disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading to separation was misconduct under Iowa law.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The December 24, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 15, 2021
Decision Dated and Mailed

sa/ol

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.