

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TINA PORTERFIELD**  
Claimant

**CNH AMERICA LLC**  
Employer

**APPEAL NO. 14A-UI-02668-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

**STATEMENT OF THE CASE:**

CNH America, LLC (employer) appealed an unemployment insurance decision dated February 26, 2014, (reference 01), which held that Tina Porterfield (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2014. The claimant participated in the hearing. The employer participated through Jill Dunlop, Human Resources/Labor Relations. Employer's Exhibits One and Two were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time material handler on May 16, 2011, and is still employed in that same capacity but is off work on short-term disability, which is unrelated to her unemployment claim. She filed a claim for benefits when she received a disciplinary suspension of three days. The claimant was suspended from January 28, 2014, through January 30, 2014, because she had seven attendance points. The most recent absence was due to properly reported illness on January 15, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined in this matter is whether the claimant's disciplinary suspension and subsequent termination were for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An

individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

The claimant was suspended for having too many attendance points but her last absence was due to properly reported illness. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). However, excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's disciplinary suspension was not due to work-related misconduct and benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated February 26, 2014, reference 01, is affirmed. The claimant was suspended for disciplinary reasons. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs