

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER J SCHONS**  
Claimant

**APPEAL 19A-UI-03755-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSOCIATED MILK PRODUCERS INC**  
Employer

**OC: 04/14/19**  
**Claimant: Respondent (1)**

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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:**

On May 7, 2019, the employer filed an appeal from the May 1, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 30, 2019. Claimant participated and testified. Employer participated through Human Resource Manager Jackie Holz. Employer's Exhibits 1 through 4 were received into evidence.

**ISSUES:**

Was the claimant discharged due to disqualifying, job-related misconduct?  
Has the claimant been overpaid benefits?  
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 18, 2015. Claimant last worked as a full-time cheese packaging operator. Claimant was separated from employment on April 16, 2019, when he was discharged.

The employer has a points-based attendance policy. The policy went into effect on February 1, 2019 and claimant acknowledged receipt of the policy on January 31, 2019. Under the policy points are accrued on a rolling 12-month basis. (Exhibit 1). Employees are given a half point for absences more than five minutes, but less than four hours; a full point for absences of more than four hours; and three points for a no call/no show. Employees are subject to termination once they reach six points.

Since the new attendance policy took effect, claimant was issued points for attendance occurrences on February 19, March 5, March 9, and March 15, for a total of three and a half

points. (Exhibit 4). On February 19 claimant was sick. Claimant was late on March 5 because he was at the hospital with his father. On March 9 claimant was absent because he had water in his basement. Claimant was absent on March 15 because he did not have childcare. Claimant was issued a warning for his attendance on March 19, 2019. (Exhibit 2). That warning advised that further attendance issues could result in termination.

On April 13, 2019, claimant was scheduled to work mandatory overtime. Claimant was the only employee scheduled to work mandatory overtime that day. Claimant did not show up and did not call in to work on April 13 because he was not aware he had been scheduled to work mandatory overtime. The overtime scheduled had been placed on a board near the time clock, where several other papers were also posted. Claimant had only been required to work overtime once before. In that circumstance a supervisor had alerted employees that they would be posting a mandatory overtime schedule and to be sure to check it. This time, no such announcement was made, so claimant was not aware there was a schedule to be checked. Claimant was subsequently discharged from employment, as the April 13 no call/no show put him at six and a half points. (Exhibit 3).

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 14, 2019. The claimant filed for and received a total of \$1,864.00 in unemployment insurance benefits for the weeks between April 28 and May 25, 2019. Both the employer and the claimant participated in a fact finding interview regarding the separation on April 30, 2019. 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 § 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(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(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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

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. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

The final absence occurred on April 13, 2018, when claimant was a no call/no show to a mandatory overtime shift. Claimant did not show up to work because he did not know he had been scheduled. Previously, an announcement was made informing employees that a mandatory overtime schedule would be posted. No such announcement was made during this round a mandatory overtime. While the schedule may have been posted, employees cannot be expected to check a document that they do not know is there. Thus, the final absence is excused for purposes of unemployment insurance benefits. Because his 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 May 1, 2019, (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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs