IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOHN R JACKSON Claimant **MN - IOWA ELECTRIC MOTORS** Employer	**APPEAL 19A-UI-08576-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/22/19** **Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

MN-Iowa Electric Motors (employer) appealed a representative's October 21, 2019, decision (reference 01) that concluded John Jackson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 22, 2019. The claimant participated personally. The employer participated by Ryan Lahner, Owner; Glenn Schaefer, Owner of Schaefer Compression; Noah Heggen, Electrian; and Chris Eiffler, Office Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on November 19, 2018, as a full-time electrician. The claimant signed for receipt of the employer's handbook on November 18, 2018. The handbook states, "If you cannot work because of illness or unavoidable circumstances, you will be expected to call your supervisor at least one hour prior to your shift."

On August 18, 2019, the employer issued the claimant a written warning for not performing his work efficiently. While performing a job, the claimant asked a co-worker for help. The co-worker asked the claimant to reciprocate by helping him. The claimant did so. Also during that job, the claimant had to leave work to attend a doctor's appointment and to retrieve a necessary part. The employer notified the claimant that further infractions could result in termination from employment.

The claimant had hernia surgery on September 10, 2019. He was absent from work for a recovery period from September 10 to September 15, 2019. The claimant returned to work on September 16, 2019.

On September 16, 2019, the claimant was working at a job site that required more than a day's work for the claimant and the apprentice electrician the claimant was supervising. The claimant assigned the apprentice work while he performed other tasks. The owner visited the jobsite to review the plans. The apprentice was new and wanted more instruction from the claimant but the claimant did not have enough time and had been warned about working efficiently. If the apprentice exhibited proficiency with the work, the claimant did not review it more than once unless he asked for help. The claimant reviewed the apprentice's work on an air conditioning unit and told him how to finish it for the day. The apprentice either did not follow the claimant's instructions for covering the unit or the claimant thought the apprentice should know to put the cover on the unit. The unit was not covered at the end of the shift. The claimant notified the employer that the work was not complete at the work site. This worksite needed to be completed by September 23, 2019.

After working all day, the claimant noticed bruising around the incision site and felt uncomfortable. On September 16, 2019, the claimant reported his absence due to medical issues for September 17, 2019. On September 17, 2019, the claimant reported his absence due to medical issues and his son for September 18, 2019. The absences were reported by telephone call or text. The employer responded that the claimant should return to work on September 26, 2019.

On September 26, 2019, the claimant returned to work and the office manager gave him a three-day suspension and a written warning for not inspecting the apprentice's work and discovering the absence of the cover. She also gave him a termination notice for absenteeism on September 17 and 18, 2019. The claimant saw that his tool belt had been removed from the truck and placed in the front office. He collected his other tools and drove his vehicle to find the owner.

He found the owner in the warehouse. The claimant attempted to speak with the owner as the owner walked the claimant out of the warehouse. The owner asked the claimant why the work was not done, why the claimant was not supervising the apprentice, and why the employer should keep the claimant employed. The claimant did not answer the questions because he had been terminated.

The claimant filed for unemployment insurance benefits with an effective date of September 22, 2019. The employer participated personally at the fact finding interview on October 15, 2019, by Ryan Lahner.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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 employer has the burden of proof in establishing disqualifying job misconduct. 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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a reported medical issue which occurred on September 17 and 18, 2019. The handbook states that employees are expected to "call" their supervisors. The handbook does not indicate that texting is unacceptable. The employer did not tell the claimant that he had improperly reported his absences. In fact, the employer promptly responded to the claimant's message by contacting him and offering him additional medical leave.

The claimant's absences do not amount to job misconduct because they were properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's October 21, 2019, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/scn