

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**RUSSELL R MILLER**  
Claimant

**APPEAL NO. 18A-UI-12446-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**OC: 12/02/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Parco (employer) appealed a representative's December 17, 2018, decision (reference 01) that concluded Russell Miller (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 16, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jessica Walsh, Director of Human Resources. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**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 April 23, 2018, as a full-time general manager. The claimant signed for receipt of the employer's digital handbook on April 23, 2018. The employer did not issue the claimant any written warnings during his employment.

The handbook stated that three absences would result in an employee's termination. The claimant was absent eight times by October 16, 2018, but the employer did not terminate him. One page of the handbook indicated that employees should notify management of absences. Another page in the handbook said employees should notify their supervisor of an absence.

The claimant had one supervisor, the district manager. The district manager was the son of the director of operations. On Friday, August 10, 2018, the claimant complained to the director of human resources that the district manager had behaved inappropriately in the workplace. The director of human resources determined the claimant's assertions had no validity. She had

many conversations with the claimant and the district manager, making certain there were no issues. The last meeting was on Tuesday, August 14, 2018.

The claimant reported his absence due to illness on October 12, 13, 14, and 15, 2018. The claimant was in the hospital on the weekend with heart attack like symptoms. He notified his employer by calling his work location and reporting his absence to a manager. The claimant did not speak to the district manager. On Tuesday, October 16, 2018, the claimant met with the district manager and the director of human resources. He provided the employer with a doctor's note excusing him from work from October 12 through October 16, 2018. On October 16, 2018, the employer terminated the claimant because he did not provide the note the week before (sic) or call the district manager directly to report his absences.

The claimant filed for unemployment insurance benefits with an effective date of December 2, 2018. The employer participated personally at the fact finding interview on December 14, 2018, by Jessica Walsh.

### **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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

Neither party presented any eyewitness testimony. Statements from both parties dispute whether or not the employer issued the claimant any verbal warnings. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

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 occurred from October 12 to October 15, 2018. The employer argues that the claimant did not properly report his absence because he did not tell his supervisor. The handbook has two sections that address reporting. The claimant did report his absence to management and, therefore, followed one section of the handbook. The claimant met the intent of the reporting rule. The absences will be considered properly reported. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's December 17, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs