

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TROY T THOMPSON
Claimant

PRO RESOURCES INC
Employer

APPEAL 14A-UI-07781-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/08/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the July 28, 2014 (reference 02) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 20, 2014. Claimant participated. Employer participated through Ashley Green, Corporate Administrator. Employer's Exhibits A through R were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time with Pro Resources, Inc., a temporary employment agency, and was assigned to work in the fiberglass molding department at Ashley Industrial Molding in Oelwein, Iowa. He was discharged from employment on June 11, 2014 due to exceeding the attendance point limit. His last day of work was June 4, 2014. He left early because of illness. On June 5, 6, 9, and 10 he called to report absences due to illness. The employer asked him to provide medical documentation. He could not afford to go to a doctor and did not have insurance. He told his supervisor John Lee that when he sanded fiberglass he felt terrible, could not breathe, and coughed up blood. Lee told him to wear a dust mask but the condition did not improve with so much dust in the air. His condition improved after left. He took his time card in and asked to see Brianna Christenson, on-site staffing specialist, but she was not there. He had been warned in writing on June 4, 2014 about leaving early due to illness on June 2 (Employer's Exhibit K). He was not part of a group walk-off.

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(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 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). 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). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. Because this seems to be a work-related medical condition related to OSHA safety issues, and claimant could not afford a doctor visit, his inability to provide a medical excuse did not make the absences unexcused. Because his absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The July 28, 2014 (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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