

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUENTIN K PEOPLES

Claimant

APPEAL NO. 17A-UI-03880-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II LLC

Employer

OC: 03/19/17

Claimant: Appellant (1)

Iowa Code § 96.5(2)a -- Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 17, 2017, reference 01, which denied unemployment insurance benefits. After due notice was provided, an in-person hearing was held in Burlington, Iowa, on April 28, 2017. Claimant participated. The employer participated by Mr. Chuck Griffin, Human Resource/Safety Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Quentin Peoples was employed by Bagcraftpapercon II LLC from April 3, 2015 until March 10, 2017, when he was discharged for excessive unexcused absenteeism. Mr. Peoples was employed as a full-time production worker and was paid \$10.00 per hour.

Mr. Peoples was discharged from his employment on March 10, 2017, for absences that had taken place on February 6, 7, and 8, 2017. Mr. Peoples said that absent due to illness on those dates, but at the claimant's request, the decision on whether to discharge him was delayed until it was determined by a third party whether the absences were covered under the Family Medical Leave Act (FMLA).

Mr. Peoples had been off work under FMLA for an extended period. The absences were due to illness and had qualified for protection under the FMLA. After returning to work on February 2, 2017, released by his physician, the claimant then called off work on Friday, February 3, 2017 and Monday and Tuesday of the following week. Mr. Peoples failed to notify his employer of his impending absence on February 8, 2017 and was given additional attendance infraction points for that violation of company policy.

The employer uses a "no fault" attendance policy that gives attendance infraction points to employees who are absent, arrive late, or leave early. Because the claimant had failed to call in

as required by company policy on February 8, 2017, his attendance infraction points exceeded the permissible level under the company policy. At the claimant's request, the employer allowed him extra time to attempt to have the absences covered under FMLA. When the claimant was unable to present sufficient medical documentation the retroactive FMLA was not granted and the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his work. It does.

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.

In discharge cases, the employer has the burden of proof. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See IAC 871-24.32(7). The determination of whether absenteeism is excessive normally requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See IAC 871-24.32(8). Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused, provided the employee has complied with in policy regarding notifying the employer of the absence. Tardiness or leaving work early are forms of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984)

The evidence in the record establishes that Mr. People's did not follow the employer's attendance policy in connection with his absence on February 8, 2017. The policy required that the claimant personally notify the employer of his impending absence each day, unless the absence was covered by a doctor's note excusing the worker in advance for medical reasons. Mr. People's did not provide the required notification to his employer for his final absence. Based upon the repetitive nature of claimant's absences from work, the Company believed Mr. People's had established a pattern of excessive and unexcused absenteeism.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the employer has sustained its burden of proof in establishing by a preponderance of the evidence that the claimant was discharged for misconduct, excessive unexcused absenteeism. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible.

DECISION:

The representative's decision dated April 17, 2017, reference 01, is affirmed. Claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed
rvs/scn