

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW J KITCHENS**  
Claimant

**APPEAL 19A-UI-08874-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GO DADDY SOFTWARE INC**  
Employer

**OC: 10/13/19  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
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 November 11, 2019, Go Daddy Software, Inc. (employer) filed an appeal from the October 30, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Matthew J. Kitchens was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2019. The claimant participated personally. The employer participated through Kris Meyer, Employee Relations Specialist, and Chad Johnson, Supervisor. No exhibits were admitted into the record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Consultant beginning on November 28, 2016, and was separated from employment on October 16, 2019, when he was discharged. The employer has two systems used for tracking absences and attendance. First an employee makes a vacation request two weeks in advance in Webstation, which allows only so many employees to be absent at a time. If the absence is approved in Webstation, the employee is responsible for knowing how much time paid time off they have available and if they have enough to cover the absence. Employees are responsible for having paid time off to cover their absences.

The claimant is sole caregiver for a son with special needs. He takes time off which is covered by the Family Medical Leave Act (FMLA). The claimant had three absences related to his son for which he did not have any paid time off or leave under FMLA. He missed work on October 14, December 18, and December 20, 2018 when he received calls from his son's school stating he needed to be removed from class due to issues related to his impairment. The claimant notified the employer he was leaving. Following the December 20 absence, the

employer issued the claimant a final written warning and told him any further absences without paid time to cover in the next 12 months would lead to discharge.

The claimant requested to take September 29, 2019 as a vacation day. He properly requested the time off in Webstation, which was approved. The claimant took the day off but neglected to check that he had adequate paid time off to cover the absence. Chad Johnson, Supervisor, received notice of the absence the following day and told the claimant the absence could result in his discharge as he had to report it to his supervisor and Employee Relations. The employer discharged the claimant on October 16, 2019 for violation of the attendance policy.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,500.00, since filing a claim with an effective date of October 13, 2019, for the five weeks ending November 30, 2019. Kris Meyer, Employee Relations Specialist, participated in the fact-finding interview on behalf of the employer.

### **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. Benefits are allowed.

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 provides, in relevant part:

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.

...

(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.

This definition of misconduct 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).

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 the 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). 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. 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*. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

An employer's attendance policy 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 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. The claimant's absences related to his son are excused for purposes of unemployment insurance benefits. The claimant reported his absences and they were for reasonable grounds, as his son has special needs and the claimant is his sole caregiver.

The claimant's absence on September 29, 2019 was unexcused as it was for an issue of personal responsibility. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. The employer has not met the burden of proof to show the claimant was discharged for excessive unexcused absences. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

**DECISION:**

The October 30, 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. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.



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Stephanie R. Callahan  
Administrative Law Judge

December 10, 2019  
Decision Dated and Mailed

src/scn