

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN T REINIER
Claimant

APPEAL NO. 16A-UI-13065-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 11/13/16
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's December 2, 2016, decision (reference 01) that concluded Shawn Reinier (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 3, 2017. The claimant participated personally. The employer participated by David Bergeon, Human Resources Director, and Mary Eggenburg, Benefits Specialist.

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 January 18, 2005, as a full-time hospital security officer. The claimant signed that he could look at the employer's handbook on line. The claimant was covered by a union contract that allowed him approximately fourteen sick days per year.

The claimant properly reported his absences due to illness on January 2, February 12, 26, March 22, and April 18, 2016. In May 2016, the claimant applied and qualified for Family Medical Leave (FMLA). He properly reported absences for medical issues on June 29 and 30, 2016, but these were not covered by FMLA. The claimant properly reported his absences under FMLA on May 24, June 11, July 23, August 16, September 1, 18, and November 5, 2016. He properly reported absences for medical issues on June 29 and 30, 2016, but these were not covered by FMLA. Eleven of the absences were contiguous with a day off. Three were not next to a day off.

On November 5, 2016, the employer thought there were too many absences due to medical issues, FMLA and non-FMLA, that were next to a day off and so he investigated. On November 6, 2016, the employer told the claimant not to return to work until a meeting was held

on November 14, 2016. At the meeting the employer told the claimant he was absent due to a medical reason on a day contiguous with a day off ten times in the last year. The employer considered this a pattern of abuse even though the claimant was unable to work due to a medical condition. On November 14, 2016, the employer terminated the claimant for a pattern of abuse. The last day the claimant reported an absence due to a medical issue that was contiguous with a day off was on September 18, 2016, an FMLA protected absence.

REASONING AND CONCLUSIONS OF LAW:

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

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(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 on a day contiguous with a day off was a properly reported illness which occurred on September 18, 2016. The claimant was not discharged until November 14, 2016. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's December 2, 2016, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs