

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TOBIN J ORCUTT**  
Claimant

**IRON BOW TECHNOLOGIES LLC**  
Employer

**APPEAL 17A-UI-09285-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/20/17**  
**Claimant: Appellant (2)**

---

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 claimant filed an appeal from the September 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2017. The claimant participated personally. The employer participated through Debbie Yassine, vice president of human resources. Barbara Wehrle, benefits manager, also testified. Employer Exhibit 1 (26 pages) was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed full-time as a lead network administrator and was separated from employment on August 14, 2017, when he was discharged. He last performed work on June 30, 2017.

The claimant went on an approved leave of absence from July 3 through 30, 2017, due to a personal medical condition. The leave of absence was through the Family and Medical Leave Act (FMLA). While on a leave of absence, the employer tried to contact the claimant about his status to return to work. The claimant did not return to work on July 31, 2017, but told his employer that he was following up with his doctor for additional information on July 28 or 31, 2017. He was given additional documentation for his doctor to complete, which was never received by the employer.

Originally, the claimant was approved for short term disability through August 13, 2017. However, it was modified by the employer's vendor, Guardian Life Insurance, and the claimant sent the employer updates on July 22 and 29, 2017 that his leave of absence would end July 30, 2017. On August 3, 2017, the claimant took his doctor paper work, and requested it be completed. His doctor told him it would be sent in on his behalf to Guardian Life Insurance. He followed up repeatedly with his doctor's office and was later informed that they do not generally submit that type of paperwork for patients. The claimant made multiple attempts and even visited the office again to verify the paperwork was being submitted on his behalf. On August 3 and 10, 2017, the claimant left a voicemail for the employer that he was following up with the doctor. The paperwork was not received by the employer or its guardian. The claimant was then discharged for failure to return to work or provide supporting documentation to extend his leave of absence.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment due to job-related 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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot 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 if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act.

The claimant last performed work on June 30, 2017, before he went on a leave of absence. Originally, the claimant was approved for leave through August 13, 2017, but it was shortened to July 30, 2017. The claimant made a good faith effort to stay in contact with the employer, by notifying the employer before his leave ended that he intended to seek an extension, taking the documentation to his doctor, and then following up with the employer that he had provided the documentation for his doctor to complete, but which was never received by the employer. For unknown reasons, the claimant was given conflicting information by his doctor and the doctor's office, who first stated they would complete and submit the requested information by the employer, and then later informed him after he followed up, that they do not typically handle that type of paperwork.

The administrative law judge is sympathetic to the employer, who clearly tried to work with the claimant by not moving forward with discharge sooner and did not receive the necessary documentation from his treating physician to extend his leave of absence. The administrative law judge is persuaded that the claimant's absences due to illness July 3 through August 13, 2017 would be excused, as the claimant was making the employer aware that he could not work due to illness and that he had submitted the requested medical documentation to his treating physician. The administrative law judge recognizes the strain the claimant's attendance history had on the employer, but medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

Based on the evidence presented, the administrative law judge concludes the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. In spite of the expiration of the FMLA and other leave period, because the final cumulative absence for which he was discharged was related to properly reported illness or injury and related ongoing medical treatment, no misconduct has been established and no disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

**DECISION:**

The September 7, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/scn