

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PASCAL GASPAL

Claimant

WHIRLPOOL CORPORATION

Employer

APPEAL 20A-UI-02307-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20

Claimant: Appellant (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(11) – Incarceration

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 11, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 28, 2020, at 8:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

Whether claimant's separation is disqualifying due to incarceration.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time assembler from May 1, 2019 until his employment with Whirlpool Corporation ended on February 21, 2020. Employer has a points-based attendance policy. Claimant received a copy of the policy. Claimant was absent from work for two days because he was driving without a valid license. Claimant could not notify employer because the jail would not allow him to use the telephone. Claimant pled guilty to the criminal charge for which he was incarcerated. Claimant received a final written warning regarding attendance on January 9, 2020. The warning stated that if claimant was absent again he may be terminated. Claimant was absent from work on February 18, 2020 due to car trouble. On February 21, 2020, employer discharged claimant for accruing too many points under the attendance policy.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog of appeals caused by the recent Covid-19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. Claimant may have also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). There have been no initial investigations and decisions regarding whether claimant has been overpaid regular unemployment insurance benefits or FPUC. The

issues of whether claimant has been overpaid benefits and whether claimant has been overpaid FPUC should be remanded to the Benefits Bureau for an initial investigations and decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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.

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.

Excessive absences are not considered misconduct unless unexcused. The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191. Claimant's absences in January 2020 and his absence on February 18, 2020 are unexcused because they were not for reasonable grounds. Claimant had received a final written warning for his attendance and knew or should have known that his job was in jeopardy. Claimant's unexcused absenteeism was excessive and constitutes disqualifying job-related misconduct. Benefits are denied.

The issues of whether claimant has been overpaid regular unemployment insurance benefits and whether claimant has been overpaid FPUC are remanded to the Benefits Bureau for initial investigations and decisions.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 11, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The issues of whether claimant has been overpaid regular unemployment insurance benefits and whether claimant has been overpaid FPUC are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigations and decision.

A handwritten signature in black ink, appearing to read "Adrienne C. Williamson".

Adrienne C. Williamson
Administrative Law Judge
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Des Moines, Iowa 50319-0209
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April 30, 2020
Decision Dated and Mailed

acw/scn