

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC D FOX
Claimant

SCE PARTNERS LLC
Employer

APPEAL 16A-UI-12257-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Eric D. Fox (claimant) filed an appeal from the November 9, 2016 (reference 01) unemployment insurance decision that denied benefits based upon the determination SCE Partners, LLC (employer) discharged him for excessive unexcused absenteeism after being warned. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2016. The claimant participated personally. The employer participated through Human Resources Manager Renae Merchant. Employer's Exhibit 1 was received.

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 Security Officer beginning on December 30, 2015 and was separated from employment on October 20, 2016, when he was discharged. The employer has a point system for attendance. The number of points accumulated with each incident depends on the type and duration of absence as well as the amount of notice the employer receives regarding the absence. The claimant gave more than two hours' notice on each of his absences when appropriate, with the exception of one. For that absence, he notified the employer less than two hours before the start of his shift of his absence.

The claimant was discharged after accumulating 12 points under the employer's attendance policy. On January 7, 2016, the claimant left work more than two hours early as he was ill. He notified his supervisor he was leaving before he left. On January 15, 2016, the claimant was absent because he was tired. On February 22, 2016, the claimant missed work due to a sore back. On March 8, 2016, the claimant missed work as he possibly had pink eye. On April 5, 2016, the claimant missed work due to the flu. On April 18, 2016, the claimant was three minutes late to work, no reason for the tardiness has been supplied. On May 30, 2016, the claimant was absent and no reason for the absence was given to the employer. On June 29, 2016, the claimant was absent due to illness.

On July 17, 2016, the claimant forgot he was scheduled early for a special event and missed four hours of work without notifying the employer. He received a written warning on July 20, 2016 which notified him that he had accrued nine attendance points. On July 28, 2016, the claimant left work early due to illness.

On August 27, 2016, the claimant was half-hour late to work as he overslept. He was issued a final written warning the following day which put him on notice that he had accrued ten attendance points and would be subject to discharge if he accumulated 12 attendance points. On September 7, 2016, the employer needed two additional employees to cover a special event the following day. The claimant and one other employee volunteered for the hours. On September 8, 2016, the claimant notified the employer that he would not be able to work the special event as he needed to help his brother with a personal issue. On October 17, 2016, the claimant was 51 minutes late to work as he overslept. He was discharged on October 20, 2016 as he had accumulated 12 attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits based on wages from this employer's account are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

“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.

Iowa Admin. Code r. 871-24.32(1)a. 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).

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 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 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 the 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. 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

The claimant had a total of 13 absences over his ten-month tenure. His absences were excessive. The issue becomes whether his absences were excused. The claimant missed work due to illness on January 7, February 22, March 8, April 5, June 29, and July 28; those six absences are considered excused. The claimant missed work due to oversleeping or being tired on three occasions, one of which was the final incident. He missed work with no explanation on two occasions. He also missed early shifts, one because he forgot and the other because his brother needed assistance, which are both issues of personal responsibility. The claimant had a total of seven unexcused absences over his ten-month tenure.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits based on wages from this employer's account are withheld.

DECISION:

The November 9, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits based on wages from this employer's account are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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