

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MUDESTHIR M ABDALLA**  
Claimant

**IOWA PREMIUM LLC**  
Employer

**APPEAL 17A-UI-00616-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/11/16  
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 6, 2017 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting his employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2017. The claimant, Mudesthir M. Abdalla, participated personally. The employer, Iowa Premium LLC, participated through witness Jenny Mora.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production line worker. He was employed from May 4, 2016 until December 12, 2016. Claimant worked Mondays through Fridays and occasionally on Saturdays. Claimant began his workday at 6:00 a.m. Claimant would either work eight hour or ten hour days depending on business needs.

The employer has a written attendance policy. Claimant received a copy of the attendance policy. The policy states that employees are subject to discharge if they reach twelve points in a rolling twelve-month period. Each properly reported absence accrues two points. Unreported or improperly reported absences accrue three points. Employees are required to call in and report their absences at least thirty minutes prior to their schedule shift start time.

Claimant had received a written warning in October regarding his excessive attendance. At this time he was over the allowed twelve points pursuant to the policy. Claimant was told that an additional absence could subject him to discharge.

On December 5, 2016 claimant was to report to work at 6:00 a.m. Claimant called in and reported his absence at least thirty minutes prior to his scheduled shift start time. However, he did not report that his absence was due to illness. Claimant was aware of how to report an absence due to illness because he had done so previously.

Besides December 5, 2016, claimant had been absent on October 17, 2016 (due to illness); October 15, 2016 (due to illness); October 1, 2016 (for no reason); September 30, 2016 (for no reason); September 29, 2016 (for no reason); September 20, 2016 (due to illness); September 19, 2016 (due to illness); September 3, 2016 (due to illness); August 24, 2016 (due to illness); July 5, 2016 (for no reason); June 20, 2016 (for no reason); June 1, 2016 (for no reason); and May 31, 2016 (for no reason).

Claimant failed to properly report his absences on October 17, 2016; October 15, 2016; October 1, 2016; September 30, 2016; September 29, 2016; September 19, 2016; September 3, 2016; July 5, 2016; June 20, 2016; June 1, 2016; and May 31, 2016. Claimant knew that he needed to report his absence at least thirty minutes prior to his scheduled shift start time.

On December 6, 2016 claimant was called into Ms. Mora's office and told that he was being suspended pending investigation into his absences. When asked on December 6, 2016 why he was absent the previous day claimant did not disclose to Ms. Mora that he had been ill. His keycard was removed and he was told that he would be contacted by Ms. Mora with a decision. Ms. Mora tried to telephone claimant on two separate occasions on December 12, 2016 to inform him that he was being discharged for absenteeism; however, she was unable to reach him.

#### **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 are denied.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment for job-related 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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

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.

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). Excessive absences are not considered misconduct unless unexcused. *Id.* at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Id.* at 558.

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 unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10 (Iowa 1982). 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.” *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

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. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer’s interest is not shown and this is essential to a finding of misconduct. *Id.*

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929\*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep’t of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Ms. Mora’s testimony is more credible than claimant’s testimony about whether or not he reported he was ill on December 5, 2016.

In this case, the claimant had received a written warning for excessive absenteeism. The claimant knew that he needed to come to work on time. He understood the attendance policy and knew that he needed to report any absences at least thirty minutes prior to his scheduled shift start times.

The following dates claimant either did not properly report his absences or they were for insufficient reasons for purposes of unemployment insurance benefits: December 5, 2016;

October 17, 2016; October 15, 2016; October 1, 2016; September 30, 2016; September 29, 2016; September 19, 2016; September 3, 2016; July 5, 2016; June 20, 2016; June 1, 2016; and May 31, 2016. Claimant had twelve unexcused absences in less than seven months. While the last absence on December 5, 2016 was properly reported at least thirty minutes prior to his scheduled shift start time, it was for no reason given and was therefore unexcused. Twelve absences in less than seven months are excessive. The final absence, in combination with the claimant's history of unexcused absenteeism, amounts to job-related misconduct. Benefits are denied.

**DECISION:**

The January 6, 2017 (reference 01) unemployment insurance decision is modified with no change in effect. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld in regards to this employer until such time as he is deemed eligible.

---

Dawn Boucher  
Administrative Law Judge

---

Decision Dated and Mailed

db/