

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY R LINE
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 18A-UI-03409-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/01/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 5, 2018, (reference 03) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 9, 2018. Claimant participated. Employer participated through human resource employee Jamie Johnson and was represented by Toni McColl. Alison Kehoe observed. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 11, 2007. Claimant last worked as a full-time crew leader. Claimant was separated from employment on February 13, 2018, when he was terminated.

Employer has an attendance policy stating employees will be terminated after accruing ten attendance points in a rolling calendar year. If an employee has an absence covered by approved Family and Medical Leave Act (FMLA) leave, he or she is required to report the absence to employer's third party administrator, Cigna, within 48 hours of the absence. Claimant was aware of the policy.

Claimant was absent from work on December 28, 2016; January 13 and 20, 2017; March 12, 2017; April 3, 16, and 23, 2017; May 26, 2017; June 23 and 28, 2017, July 16, 2017; September 30, 2017; and December 29, 2017.

When claimant reported the absences on April 23, May 26, June 23, and July 16, 2017, to employer, he reported the absences were covered by approved FMLA leave. However, claimant did not report those absences to Cigna. Employer did not give claimant points for those absences, and instead considered them "pending" because it did not want to terminate a long-term employee.

On October 5, 2017, employer gave claimant a written warning for accruing eight attendance points.

On January 3, 2018, employer gave claimant a written warning for accruing nine attendance points.

On January 24, 2018, employer decided it would no longer tolerate claimant's attendance issues, and informed him that he had until February 2, 2018, to contact Cigna and provide whatever documentation was necessary to have the April 23, May 26, June 23, and July 16, 2017, absences covered by FMLA. If claimant failed to do so, he would be terminated for exceeding the amount of allowable attendance points.

Claimant contacted Cigna, but did not provide documentation verifying his absences were due to reasons covered by his approved FMLA leave.

On February 13, 2018, employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

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.

In this case, employer asserts it terminated claimant for excessive absenteeism. Claimant's last absence was on December 29, 2017. On January 3, 2018, employer gave him a final warning and there were no alleged incidents of attendance infractions thereafter. The employer knew about the April 23, May 26, June 23, and July 16 absences and the fact they were not reported to Cigna or verified with medical documentation when they happened. Yet employer waited until January 24, 2018, to take any action. Employer has failed to establish it terminated claimant for a current or final act of misconduct. Accordingly, benefits are allowed.

Because claimant is qualified to receive benefits, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The March 5, 2018, (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn