

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**TOMMY L CAMPBELL**  
Claimant

**APPEAL NO. 18A-UI-02507-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CG ACQUISITION CO**  
Employer

**OC: 01/21/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

CG Acquisition Company (employer) appealed a representative's February 14, 2018, decision (reference 01) that concluded Tommy Campbell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2018. The claimant participated personally. The employer participated by Bailey Voss, Human Resources Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 24, 2017, as full-time shipping and receiving clerk. He signed for receipt of the employer's handbook on April 24, 2017. The employer's attendance policy states that an employee will be terminated when he uses all his attendance points.

As of July 24, 2017, the claimant had five attendance points remaining. The employer's record showed the claimant was tardy for work on August 17, 28, September 22, and November 13, 2017. He received 0.25 attendance points for each incident. He was absent from work on August 26 and October 7, 2017, and received one point for each day. On September 12, 2017, the claimant did not appear for work or notify the employer of his absence and he received 1.5 attendance points. The claimant forgot to punch out on December 4, 2017, informed his supervisor of the mistake, and received 0.25 attendance point.

On January 8, 2018, the claimant properly reported his absence to the employer. He went to the doctor and received a note excusing him from work on January 8, 2018. On January 12, 2018, the employer terminated the claimant for having accrued more than five attendance

points. The claimant told the employer he had a doctor's note for January 8, 2018. Absences due to properly reported illnesses are not excused by the employer.

The claimant filed for unemployment insurance benefits with an effective date of January 21, 2018. The employer participated personally at the fact finding interview on February 12, 2018, by Bailey Voss.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on January 8, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's February 14, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs