

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER W ELLIS
Claimant

VA CENTRAL IA HEALTHCARE
Employer

APPEAL NO. 19A-UCFE-00029-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 21, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 16, 2020. Claimant participated personally. Employer participated by Michelle Kroymann. Claimant's Exhibits A-F were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 1, 2019. Employer discharged claimant on November 4, 2019 because claimant had multiple tardies a few days after signing a last chance warning for excessive tardiness and absenteeism.

Claimant worked as a full time medical supply tech for employer. Claimant had multiple conversations and warnings from his superiors throughout 2019 concerning ongoing attendance issues with claimant taking extended lunches on multiple occasions and arriving late to his shift multiple times.

The last, most recent events that led to claimant's termination occurred on October 29, 2019 when claimant signed a last chance agreement after repeated warnings. Said agreement stated that claimant would not go ahead with allegations of alleged bias shown by claimant's supervisor against claimant in exchange for employer allowing claimant a last chance after his multiple warnings for attendance problems. At the time of claimant's signing the last chance agreement he had no personal time off.

On October 31, 2019 weather in or around the Iowa City area caused schools to have a two-hour delay. Claimant called into work around the time for his shift to start attempting to use care and bereavement leave to cover his two-hour absence. Claimant was told that this type of leave

would not be allowed when claimant did not have ill children. Claimant had no personal time to cover the two hours. Claimant stated that he didn't know he could not use the care and bereavement time to cover his tardiness as he'd not had this experience previously.

On November 1, 2019 claimant signed into work at 7:12 a.m. Claimant's shift was to begin at 7:00 a.m. Claimant stated that employer has a 10 minute allowance at the start of shifts, so he was 2 minutes late.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an

intentional policy violation. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. 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). The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism and tardiness. Claimant was warned repeatedly concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant received multiple warnings and a last chance warning just days before claimant was tardy for work two days in a row. Even if the administrative law judge were to find claimant made an honest mistake with regard to October 31, 2019 (that finding is not made), the administrative law judge cannot overlook yet another tardiness so soon after signing a last chance warning. Such actions indicate claimant's concerns are not those of his employer and indicate disregard of standards of behavior which the employer has the right to expect of employees. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 21, 2019, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn