

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRADD F THOMPSON**  
Claimant

**RELCO LOCOMOTIVES INC**  
Employer

**APPEAL 19A-UI-10108-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/24/19  
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Relco Locomotives (employer) appealed a representative's December 12, 2019, decision (reference 01) that concluded Bradd Thompson (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 held on January 16, 2020. The claimant participated personally. The employer participated by Tim Ash, Human Resources Manager.

The employer offered and Exhibits One, Two, Three, Four, Five, and Six were received into evidence. The administrative law judge took official notice of the administrative file.

**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 16, 2018, as a full-time welder/fabricator. He signed for receipt of the employer's handbook on April 16, 2018. The handbook did not indicate the claimant had to work mandatory overtime but the employer was scheduling the claimant as if he were working mandatory overtime all year.

On October 24, 2018, and September 19, 2019, the employer issued the claimant a written warning for tardiness after the claimant appeared for work a couple minutes late on October 11, 2018, and September 20, 2019. The claimant was warned the he could be terminated for future infractions.

On August 26, 2019, the claimant properly reported his absence due to having abscessed teeth. He appeared for work on August 27, 2019, but told the employer he had to leave early to see a dentist and have teeth removed. The employer told him he could leave but would receive a disciplinary action for his absences. On August 30, 2019, the employer issued the claimant a

written warning for his absences due to his medical condition on August 26 and 27, 2019. The employer notified the claimant that further incidents could result in termination from employment.

On November 19, 2019, the claimant tried to work while sick with influenza. He had diarrhea and vomited in a garbage can and outside the premises. At 2:00 p.m. he asked the employer for permission to go home. On November 20, 2019, he properly reported his absence due to illness. On November 21, 2019, he appeared for work. After working his shift, the employer terminated him for absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of December 12, 2019. The employer participated personally at the fact finding interview on December 10, 2019, by Tim Ash.

### **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 incidents of absenteeism were properly reported and due to illness. They occurred on November 19 and 20, 2019. The claimant's absences do not amount to job misconduct because they were 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 December 12, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn