

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH B COZAD
Claimant

APPEAL NO. 13A-UI-10755-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA STANDARD INC
Employer

OC: 08/18/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joseph Cozad filed a timely appeal from a representative's decision dated September 11, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 15, 2013. Claimant participated. The employer participated by Mr. Tom Kuiper, Hearing Representative, and witnesses: Ms. Amber Brouhard, Senior Human Resource Generalist and Mr. Mark Bolton, Second Shift Supervisor. Employer's Exhibits One, Two, Three, Four, Five, Six, Seven and Eight were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Joseph Cozad was employed by Omaha Standard, Inc. from July 28, 2011 until August 12, 2013 when he was discharged for exceeding the permissible number of attendance infraction points under the company's attendance policy. Mr. Cozad was employed as a full-time machine operator for the company and was paid by the hour. His immediate supervisor was Mr. Mark Bolton.

Mr. Cozad was discharged when he accumulated attendance infraction points after he exceeded the three-day bereavement time that was allowed to him by the company to attend his grandson's funeral in North Carolina. Under the provisions of the company's "no fault" attendance policy, employees are assessed attendance infraction points if they are absent, leave early or are late for work or for absences that the company considers to be non-excused. Per the policy arriving late or leaving early for less than one half of a shift results in one half of an attendance point. Absences for more than a half of a shift are assessed two points and absences that the company does not qualify as excused are assessed at one point per occurrence, however, multiple days off for the same medical reason are counted as one occurrence, providing the employee provides medical documentation. No-call/no-shows are assessed two points per occurrence. Employees are warned on the accumulation of four points

and are given a final written warning on the accumulation of six points and are subject to termination when they accumulate eight attendance infraction points within a rolling 12-month period. Mr. Cozad was aware of the policy. The claimant received a final warning from the company regarding attendance on August 1, 2013 informing him that he had accumulated six attendance infraction points as of July 17, 2013 and that additional missed time might result in termination from employment.

The final events that caused Mr. Cozad's discharge began on August 7, 2013. Early that morning the claimant was informed of the death of his grandson in the state of North Carolina. Mr. Cozad immediately contacted his supervisor and requested a one-week leave of absence to attend the funeral in North Carolina. Mr. Bolton stated that he thought that the one-week leave of absence would be okay and added that he would check with the company vice president.

Mr. Cozad immediately began travelling by automobile to North Carolina to attend the funeral that he believed would take place on Saturday, August 10, 2013. En route, Mr. Cozad was informed that the company had decided not to grant him a one-week leave of absence because his attendance record was not good. Mr. Cozad, who was en route, continued the trip to North Carolina believing that he could attend the funeral and return by his next scheduled work day.

Upon arriving in North Carolina, the claimant was unexpectedly informed that an autopsy was being required by the state and that the funeral would be delayed until Wednesday, August 14, 2013. Claimant called Omaha Standard, Inc. informing the employer of the unexpected change and stating that the claimant would return as soon as possible by Friday, August 16, 2013. Mr. Cozad attended his grandson's funeral and immediately returned by mid-morning Friday, August 16, 2013 but concluded he had been discharged because the employer had not returned any of his calls although he had requested that they do so.

It is the claimant's position that he exceeded the permissible number of infraction points under the company's no fault policy because of circumstances that were beyond his control due to the funeral being unexpectedly delayed and the distance that the claimant was required to travel to return to work. It is the claimant's further position that a substantial number of occasions when he left work early were for medical reasons associated with his previous work injury and were properly reported to the employer. It is the claimant's belief that those infractions should not have counted against him nor prevented him from being granted a week of absence to attend his grandson's funeral so far away.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

871 IAC 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 job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Excessive absences are not considered misconduct unless unexcused. Absence due to illness properly reported does not constitute job misconduct since it is not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. The claimant's absence to attend the funeral of his grandchild is an excusable reason to be absent and the claimant properly notified his employer of his need to be absent and the reason.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of illness or absence for a similar "excusable" reason it is deemed excused for the purpose of the Iowa Employment Security Act. An employer's point system or no fault absenteeism policy is not dispositive of the issue of qualification for benefits. If the final absence for which the employee was discharged was related to a properly reported excusable reason, no final or current incident of unexcused absenteeism has been established and no disqualification from unemployment insurance benefits is imposed.

The administrative law judge concludes that a number of the claimant's absences were due to illness or injury and properly reported and thus should not have been unexcused by the employer. The claimant's final absence was for an excusable reason and was properly reported. While the decision to terminate Mr. Cozad may have been a sound decision from a management viewpoint, the claimant's discharge took place under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 11, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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