

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD W SANDERS
Claimant

APPEAL NO. 16A-UI-07517-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERFACE SEALING SOLUTIONS INC
Employer

OC: 06/12/16
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Interface Sealing Solutions, Inc. filed a timely appeal from a representative's decision dated June 29, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work for excessive absences but finding the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on July 27, 2016. Claimant participated. The employer participated by Ms. Kathleen Bobbett, Employee Relations Manager, and Mr. Henry Vicenik, Plant Manager.

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: Richard Sanders was employed by Interface Sealing Solutions, Inc. from April 20, 2015 until June 14, 2016 when he was discharged for exceeding the permissible number of attendance infractions allowed under the company's attendance policy. Mr. Sanders was employed as a full-time machine operator and was paid by the hour. His immediate supervisor was Benard Johnston.

Mr. Sanders was discharged on June 14, 2016 because he had exceeded the permissible number of attendance violations allowed under the company's "no fault" attendance policy. Under the terms of the policy, employees are assessed one violation point per absence and one-half to one point for tardiness or leaving early. When an employee accumulates six points in a rolling 12-month period, they are subject to discharge from employment. Under the policy infractions roll off after one year.

Mr. Sanders had received a verbal warning about his attendance on March 6, 2016 when he had accumulated three infraction points. The claimant was discharged after a series of absences that began on Friday, June 3, 2016. On that day the claimant reported to work at 5:00 a.m. but left work ill at 9:05 a.m. after informing his supervisor. Mr. Sanders called off work

due to illness on Monday, June 6 through Thursday, June 9, 2016. On Friday, June 10, 2016, Mr. Sanders again reported to work at 5:00 a.m. but became ill while working. The claimant was dizzy and nauseous and attempted to find his supervisor to inform the supervisor that he needed to leave work ill. After being unable to locate his supervisor in the facility and finding no other supervisory personnel present, Mr. Sanders left a written explanation for his supervisor and filled out an absence request sheet explaining that he was again leaving work due to illness.

Because the claimant had accumulated three additional absence infraction points as of June 7, 2016, he was considered to have exceeded the permissible number of infractions allowed under company policy. When the claimant attempted to report to work on Monday, June 13, 2016, he was sent home by his supervisor because he had exceeded the permissible number of absences allowed under the company's attendance policy. Mr. Sanders contacted his union representatives and returned to work the following day, June 14, 2016 and was at that time discharged from employment.

It is the employer's position that Mr. Sanders not only exceeded the permissible number of attendance infractions allowed under company policy, but that he had also violated company policy by leaving on Friday, June 10, 2016 without personally informing his supervisor or other management as required by company policy.

The employer further asserts that the claimant may have been able to save his employment by providing a doctor's note which would have allowed up to three days of absence to be reduced to one infraction point or by disputing his discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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(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.

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

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 Court in the case of Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984) held that failure to report an absence due to inability to do so or because of the nature of the illness is considered an excused absence.

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. A reported absence related to illness or an injury is excused for the purposes 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. Because the final absences for which the claimant was discharged were related to properly reported illness, claimant's absences are considered excused. The claimant's failure to provide personal notification to a supervisor on Friday, June 10, 2016, is excused as no reasonable alternatives were available to the claimant. Mr. Sanders was becoming increasingly ill and his supervisor could not be found and no other management individuals were available to give notification to. Claimant, therefore, followed a reasonable course of action by leaving written documentation explaining the reason that he was required to leave due to illness that morning. The claimant was also reasonable in concluding that providing a doctor's note would not have saved his employment because the number of absences due to illness would have nonetheless exceeded the employer's point limit.

The propriety of the decision to discharge Mr. Sanders is not the issue in this case. Although the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes intentional, disqualifying misconduct on the part of the claimant has not been shown sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 29, 2016, reference 01, is affirmed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs