

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERI K STEELE**  
Claimant

**ADVANCE STORES COMPANY INC**  
Employer

**APPEAL 21A-UI-09308-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/07/21  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge from Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding  
Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On March 29, 2021, the employer, Advance Stores Company, Inc., filed an appeal from the March 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant did not quit but was discharged from employment for no disqualifying reason. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Thursday, June 17, 2021. The claimant, Teri K. Steele, did not register a telephone number and did not participate in the hearing. The employer, Advance Stores Company, Inc., participated through witness Conor Shoelhorn, General Manager; and hearing representative RoAnne Rose represented the employer. Employer's Exhibits 1 and 2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying, job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?  
Has the claimant been overpaid FPUC benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a salesperson, from September 9, 2019, until January 30, 2021, when she was discharged for absenteeism.

Claimant's final absence occurred on January 18, 2021. Claimant texted Shoelhorn the day prior and let him know that she would not be at work on January 18 because her cousin had a heart attack and died. Claimant had also been a no-call/no-show for her scheduled shifts on January 16 and 17, 2021.

Claimant had prior absences for a variety of reasons, including emergency circumstances, daycare issues, and car trouble. The employer did not have complete records of claimant's attendance history. Claimant had never been warned about her attendance by the employer, either formally or informally.

The employer maintains an attendance policy in its Team Member Handbook. Under this policy, two no-call/no-show occurrences, either consecutive or within a twelve-month period, will result in termination of employment. Claimant received a copy of this handbook upon hire.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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(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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Casper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Casper*, 321 N.W.2d at 6; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, 734 N.W.2d at 554. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

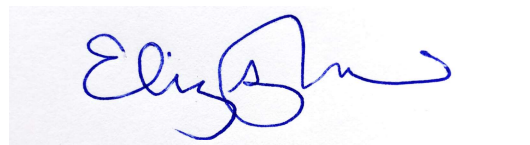
The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. The employer is pointing to claimant's two consecutive no-call/no-shows on January 16 and 17 as the reason for discharge. However, claimant's final absence was her January 18 absence, which was due to the death of a cousin. This absence was for reasonable grounds, and claimant properly reported it to the employer the day prior. Because claimant's final absence was related to properly reported reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, the history of other incidents need not be examined. Accordingly, benefits are allowed.

As claimant is eligible for benefits based on this separation, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The March 19, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



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June 30, 2021  
Decision Dated and Mailed

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