

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEATON C HUSEMAN**  
Claimant

**L & L DISTRIBUTING CO INC**  
Employer

**APPEAL 22A-UI-05803-AR-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/06/22**  
**Claimant: Respondent (4)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 23, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was not discharged for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2022. The claimant, Keaton C. Huseman, did not participate. The employer, L & L distributing Co., Inc., participated through testifying witness Tim Lanphier, with Tom Lanphier who observed. 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 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?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a delivery representative from April 23, 2018, until this employment ended on January 11, 2022, when he was discharged.

Claimant injured himself at home in October 2021. He was off work from October 7 through 15, 2021, due to the injury. On October 18, 2021, claimant returned to work and was assigned light duty. He was restricted from performing the duties of a delivery representative. On November 11, 2021, claimant spoke with Lanphier and informed him he did not like the work he was assigned for light duty. He was still restricted from performing the duties of a delivery representative. Lanphier told claimant that he should let Lanphier know when he was able to return to work as a delivery representative.

Normally, the employer allows 30 days for a leave of absence not related to a work-related injury. The employer allowed claimant two months of leave, until January 11, 2022. On that date, Lanphier discharged claimant, who was not able to return to work in his capacity as a delivery representative. Lanphier made clear that claimant was welcome to reapply when he was able.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system, no-fault absenteeism policy or leave policy is not dispositive of the issue of qualification for benefits.

Because the final cumulative absence was the result of properly reported illness or injury and related to ongoing medical treatment, no misconduct is established, and no disqualification is imposed. The separation from employment is not disqualifying.

Because claimant's separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

The next issue to be determined is whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are denied.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871—24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

An individual claimant benefits has the burden of proof that they are able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871—24.22.

Claimant did not participate in order to demonstrate that he is able to and available for work. He has not carried the burden of establishing that he is able to and available for work. Accordingly, claimant is not eligible for unemployment insurance benefits effective February 6, 2022.

**DECISION:**

The February 23, 2022, (reference 01), unemployment insurance decision is modified in favor of the appellant. Claimant's separation was not disqualifying. The issues of overpayment, repayment, and participation are moot. Claimant is not able to and available for work. Benefits are denied effective February 6, 2022.



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Alexis D. Rowe  
Administrative Law Judge

April 25, 2022  
Decision Dated and Mailed

ar/kmj