

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES J JACKSON
Claimant

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

APPEAL 22A-UI-09258-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/21/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Admin. Code r. 871-24.32(7) – Discharge / Excessive Unexcused Absenteeism
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On April 12, 2022, employer Diversified Services for Industry filed an appeal from the April 6, 2022 (reference 03) unemployment insurance decision that allowed benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Tuesday, May 31, 2022. The claimant, James J. Jackson, did not appear for or participate in the hearing. The employer, Diversified Services for Industry, participated through witness Julie Stephens, Regional Human Resource Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on January 18, 2021. He held the position of laborer, and he worked full-time hours for the employer. Claimant was discharged from employment on November 3, 2021, due to excessive and unexcused absenteeism.

Claimant's final absence occurred on November 3, 2021. Claimant was scheduled to work at 10:00 p.m. that day. He was a no-call/no-show for his scheduled shift. Claimant had two prior no-call/no-show absences during his employment, one on August 1 and the other on April 11. Additionally, claimant had called in for a full-day absence on one occasion, October 28, 2021. Claimant also had an issue with tardiness. He was late to work eleven times in September 2021, and he was late to work ten times in October 2021.

The employer maintains an employee handbook that contains an attendance policy, and claimant received this handbook. He also had the instructions on who to contact when he needed to be late to work or miss a shift. Claimant received multiple warnings related to

absenteeism during his employment. He received a written warning on April 14, 2021, immediately following his April no-call/no-show absence. He received a final warning on October 4, 2021. Claimant was made aware by the employer that his job was in jeopardy due to absenteeism.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of November 21, 2021. Claimant's unemployment insurance claim is currently locked due to failure to provide sufficient identity verification documentation to Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism.

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.

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); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). 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); 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). See also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

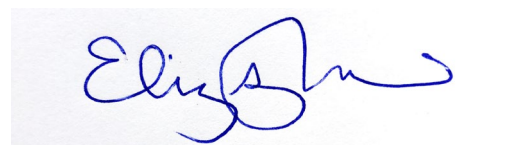
An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. However, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further improperly reported or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. Claimant’s final no-call/no-show absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

As claimant has received no benefits since separating from employment, the issues of overpayment and chargeability are moot.

DECISION:

The April 6, 2022 (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 7, 2022
Decision Dated and Mailed

lj/lj