

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DORA M CORREA**  
Claimant

**APPEAL 21A-UI-20466-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 0725/21  
Claimant: Respondent (1R)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On September 17, 2021, the employer/appellant filed an appeal from the September 7, 2021, (reference 01) unemployment insurance decision that allowed benefits based on claimant being dismissed but for not willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on November 4, 2021. Claimant requested a postponement to allow for time to conduct discovery. A telephone hearing was scheduled to be held on November 30, 2021. A motion to compel was issued and the hearing was rescheduled. A telephone hearing was scheduled to be held on December 20, 2021. The employer requested a postponement due to a witness unavailability. A telephone hearing was scheduled to be held on January 3, 2022. The claimant requested a postponement due to unavailability. A hearing was scheduled to be held on January 26, 2021. The employer requested a postponement due to a death. After due notice a hearing was held on February 9, 2022. Claimant participated through attorney Aaron M. Curry. Employer participated through hearing representative Isabella Kogut. Dory Retherford and Lacy Fry-Henry were present on behalf of the employer as witnesses. Administrative notice was taken of claimant's unemployment insurance benefits records. Exhibits 1,2, 3, A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q were admitted into the record.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?  
Should claimant repay benefits?  
Should the employer be charged due to employer participation in fact finding?  
Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 3, 2018. Claimant last worked as a full-time Monitoring

System Dispatcher on June 19, 2021. Claimant's schedule was Tuesday-Saturday from 2:00 p.m.-10:30 p.m.

Claimant went on FMLA leave beginning on April 16, 2021 through June 14, 2021, due to her husband having health issues. (Exhibit Q).

Claimant returned from FMLA leave on June 15, 2021. Claimant began experiencing mental health issues and requested to be put on FMLA leave. Claimant was put on FMLA leave beginning on June 23, 2021. (Exhibit H, pg. 25). Claimant was scheduled to return to work on July 13, 2021. (Exhibit H, pg. 25)

On July 13, 2021, while claimant was driving to work she became ill and vomited in her vehicle. At 1:47 p.m. Claimant called supervisor Sara Rameriz and notified her that she became ill on the way to work and would not be in. (Exhibit G). Claimant had vomited in her car on her way to work. Claimant attributed it to the medication she had recently started taking. Claimant also emailed employer's Human Resource Generalist, Andrea Maas, to notify her that she became ill on the way to work. (Exhibit H).

On July 13, 2021, a termination letter was drafted that terminated claimant for calling into work on July 13, 2021, and not returning to work as agreed upon. (Exhibit A, pg. 2).

On July 14, 2021, claimant was not feeling well and contacted Human Resources Generalist, Andrea Mass, and notified her that she would be absent.

On July 15, 2021, claimant was notified by email that she was terminated from employer. (Exhibit A, pg. 1).

The employer has an attendance and punctuality policy that states:

"All employees are expected to arrive on time and ready to work their scheduled post at their scheduled start time.

"If an employee is unable to arrive at work on time or if an employee will be absent for a shift, the employee must contact their supervisor four hours prior to the start of their shift, as well as Per Mar Guard Dispatch... Voice mail, text and e-mail messages are not acceptable except in certain emergency circumstances. Excessive absenteeism or tardiness will result in discipline up to and including termination. Failure to show up or call in for a scheduled shift without prior approval may result in termination..."

Claimant was aware of this policy.

Claimant received a written warning regarding her attendance on November 22, 2019. (Exhibit 1, pg. 11). Claimant had four absences due to medical reasons. Claimant was warned that her employment could be terminated if her attendance did not improve.

Claimant filed for unemployment insurance benefits with an effective date of July 25, 2021. Claimant's weekly benefit amount is \$346.00. Claimant began receiving benefits for week ending July 31, 2021 and received benefits through week ending January 22, 2022. Claimant received a total of \$8,996.00.

The employer did not participate in the fact-finding interview. The employer received a notice of fact-finding interview on August 23, 2021. Iowa Workforce Development attempted to call employer on September 3, 2021, and the employer did not answer.

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

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

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper 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). 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

Claimant was on her way to work when she became ill and vomited in her car approximately 13 minutes before her shift started. Claimant notified the employer of the emergency situation and informed them she became ill on her way to work. The employer terminated claimant for this absence (Exhibit 3). Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Accordingly, benefits are allowed. The employer's account shall be charged.

Since the claimant is allowed benefits the issues of overpayment and whether claimant should repay benefits is moot.

The claimant was having mental health problems and having issues with her medication during the week of July 13, 2021. The issue of whether claimant was able to work and available to work effective July 25, 2021 has not been examined.

**DECISION:**

The September 7, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall be charged.

Due to claimant being allowed benefits the issues of overpayment and whether claimant should repay benefits is moot.

**REMAND:**

The issue of whether claimant was able to work and available for work effective July 25, 2021, due to her mental health problems and medication issues, is remanded to the Benefit Bureau for an initial investigation and determination.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

March 4, 2022

Decision Dated and Mailed

cs/abd