

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONRADO VICENTE
Claimant

PELLA CORPORATION
Employer

APPEAL 24A-UI-03672-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/17/24
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Conrado Vicente, filed an appeal from the April 3, 2024 (reference 01) unemployment insurance decision that held the claimant ineligible for unemployment insurance benefits after a separation from employment. The parties were properly notified of the hearing. A hearing was held in Ottumwa, Iowa on April 25, 2024. The claimant participated personally with Spanish interpreter Emily Bibler. The employer, Pella Corporation, participated through Human Resources Representative Lorena Salmeron. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a full-time woodworker for Pella Corporation from January 2, 2024, to February 12, 2024, when he was discharged. The claimant worked from 3:40 p.m. to 2:10 a.m. Monday through Thursday.

The employer uses a point system or no-fault absenteeism policy, wherein any unanticipated absence or late arrival is considered “unexcused.” Any unanticipated absence or tardy must be reported to the employee’s supervisor at least one hour prior to the start of the employee’s shift. For probationary employees in their first 60-days of employment, employment is terminated if the employee receives 12 attendance points. Employees receive two points for each unanticipated absence and one point for each tardy. The claimant received a copy of, and was familiar with, the attendance policy.

When an employee accumulates six points and ten points in a rolling one-year period, the employer emails the employee a warning notifying the employee of their attendance points. The employee’s supervisor then meets with the employee to discuss their attendance and determine whether there are any issues that need to be addressed or accommodated.

On January 8 and January 11, 2024, the claimant texted his supervisor at least one hour prior to the start of his shift and informed his supervisor that he would be absent from work because he was uncomfortable driving his truck in the snow. The claimant received two attendance points for each absence.

Sometime in late-January 2024, the claimant texted his supervisor at least one hour prior to the start of his shift that he was going to be absent from work because he had a headache. On January 25, 2024, the claimant received an email that he was at six attendance points for the rolling one year period. That same day, the claimant's supervisor met with the claimant and discussed his attendance.

On February 6, 2024, the claimant texted his supervisor at least one hour prior to the start of his shift that he was going to be absent from work for personal reasons. The next day, February 7, 2024, the claimant was absent from work without notifying his supervisor of the reason. The claimant's supervisor texted the claimant in Spanish asking the claimant why he was absent, but the claimant did not respond to his supervisor's text message. The claimant was again absent without notifying his supervisor on February 8, 2024. A human resources representative tried calling the claimant, but the claimant did not answer or return the phone call. The claimant's absence on February 8, 2024, put him at 12 attendance points in his first 60-days of employment.

On Monday, February 12, 2024, the employer called the claimant into a meeting to discuss his attendance. During the meeting, the claimant told the employer that he had been absent from work because of a leg injury and he provided the employer a doctor's note and a copy of an x-ray. The employer instructed the claimant to contact health services, explain his injury and to provide health services his medical documentation. The employer then suspended the claimant pending the decision from health services. As of February 19, 2024, the claimant had not contacted the employer's health services department. That same day, the employer mailed the claimant a letter informing him that his employment was being terminated effective immediately due to excessive, unexcused absences in violation of the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(9) Excessive unexcused tardiness or absenteeism.

Iowa Admin. Code r. 871-24.32(4) and (7) provide:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

...

(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 of proof in establishing disqualifying job misconduct. *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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Excessive absences are not considered misconduct unless unexcused. 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). An

employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above and using my own common sense and experience, the administrative law judge finds the employer's testimony concerning the claimant's awareness of the work rules, the warnings he received, and his communication with his supervisor to be more credible than the claimant's testimony regarding those issues. The employer's testimony was clear, consistent, and included specific details that rendered its account more consistent with other believable evidence. For this reason, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

In this case, the record shows that between January 8 and February 6, 2024, the claimant was absent from work on four separate occasions due to weather, vehicle problems, and personal reasons. While the claimant did call and notify his supervisor each day he was absent, the claimant's reasons for being absent—his discomfort driving in snow and lack of transportation—are issues of personal responsibility. Under Iowa law, these are unexcused absences. The employer has established the claimant was warned that further unexcused absences could result in termination of employment. The claimant's final "no call, no show" absences on February 7 and 8, 2024, in combination with the claimant's recent history of unexcused absences, is considered excessive. As such, the administrative law judge concludes that the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The April 3, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the February 9, 2024, separation date, and provided he is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

May 8, 2024
Decision Dated and Mailed

PBT/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.