

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**NICOLE FRANCO**  
Claimant

**APPEAL NO. 22A-UI-16102-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTENE MANAGEMENT COMPANY LLC**  
Employer

**OC: 07/24/22  
Claimant: Appellant (2)**

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Iowa Code Section 96.5(2)(a) & (d) – Discharge

**STATEMENT OF THE CASE:**

On August 15, 2022, Nicole Franc (claimant) filed a timely appeal from the August 11, 2022 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on July 27, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 13, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate.

**ISSUES:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Nicole Franc (claimant) was employed by Centene Management Company, L.L.C. as a full-time Long-Term Support Service Care Coordinator (case manager) from April 2019 and last performed work for the employer on July 20, 2022. The work involved providing case management for 45 to 50 individuals with chronic long-term disabilities so those individuals could live as independently as possible in the community. The work involved meeting with consumers/members on a monthly basis and contacting providers to arrangement for appropriate support services. The claimant performed some of the work from her home and performed some of the work in the community, meeting with clients and providers. The work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. Gina Farrington was the claimant's immediate supervisor.

The claimant suffers from chronic mental health issues and receives ongoing counseling and psychotropic medication management services. The claimant has been diagnosed with depression and more recently has received the additional diagnosis of bipolar disorder.

On July 20, 2022, the claimant experienced difficulty in logging onto her work computer. The claimant was scheduled to start her work day from home and had appointments in the community set for later in the day. The claimant spent upwards of a couple hours trying to log onto her computer. The claimant suffered a mental health breakdown. The claimant notified her supervisor that she had been trying unsuccessfully to log onto her computer. The claimant's supervisor accused the claimant of simply not logging on that day. The claimant's mental health spiraled downward from there. The claimant did not complete her workday on July 20, 2022. The claimant believes the employer was thereafter in contact with the claimant's emergency contact, the claimant's mother, regarding the claimant's need to be away from work for the remainder of the week, Thursday and Friday, July 21-22, 2022. The claimant believes the employer treated those absences as covered by PTO, paid time off. The claimant continued to be absent from the employment in the next week, including Monday through Wednesday, July 25 through July 27, 2022 without contacting the employer. The claimant was aware the employer's attendance policy required the claimant to notify her supervisor if she needed to be absent. The claimant asserts she cannot recall the employer's requirement for when and how she was supposed to give notice when she needed to be absent, the employer provided the claimant with access to its policy manual at the time of hire and the employment lasted over a year.

The claimant's mental health continued to deteriorate after she went off work on July 20, 2022. On Wednesday, July 27, 2022, the employer sent the claimant written notice the employer deemed the claimant to have abandoned the employment by being absent three days without notifying the employer of the reason for the absence. The notice indicated the employer terminated the employment under the employer's job abandonment policy. The claimant did not make contact with the employer in response to the termination letter and did not attempt to return to the employment. A health provider had not advised the claimant to leave the employment. The claimant eventually sought treatment at an emergency room for suicidal ideation. The mental health episode that began on July 20, 2022 eventually resulted in the claimant being diagnosed with bipolar disorder and led to adjustment of the psychotropic medication. The claimant advises her mental health provider concluded the claimant had entered a manic phase of her bipolar disorder at the time she claimant ceased reporting for work.

From August 9 to 11, 2022, the claimant was held at a health care facility pursuant to a 72-hour mental health commitment.

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

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

On the other hand, Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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). The Iowa Legislature has recently codified the definition of misconduct and has listed specific conduct deemed misconduct in connection with the employment. See Iowa Code section 96.5(2)(d).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present evidence to rebut the claimant's testimony. The evidence in the record indicates a July 27, 2022 employer-initiated

separation. The employer-initiated separation followed a six-work-day absence for compelling reasons that was based on debilitating mental issues that ultimately resulted in the claimant being diagnosed with bipolar disorder and subjected to a three-day involuntary mental health commitment. The claimant made contact with the employer on July 20, 2022. The claimant did not make contact with the employer regarding her need to be absent on July 21, 22, 25, 26 and 27, 2022. Early in the absence period, the claimant's supervisor was in contact with the claimant's mother, gained some level of understanding regarding the circumstances of the absences, and agreed to treat the absences through July 22, 2022 as approved paid time off (PTO). The evidence does also establish no-call/no-show absences on July 25, 26 and 27, 2022. The weight of the evidence indicates the claimant was during that period not in her right mind due to debilitating mental illness and under those circumstances may not have been able to provide reasonable and appropriate notice regarding her need to be absent. The employer presented no evidence to establish the claimant had sufficient mental health to provide reasonable notice of her need to be absent during the dates in question. The weight of the evidence does not establish unexcused absences under the applicable law. The employer presented no evidence regarding the employer's absence reporting requirement and no evidence concerning whether the employer had a policy that would deem a three-day no-call/no-show absence a voluntary quit. The weight of the evidence establishes neither a voluntary quit nor excessive unexcused absences. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The August 11, 2022 (reference 01) decision is REVERSED. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



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James E. Timberland  
Administrative Law Judge

October 11, 2022  
Decision Dated and Mailed

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**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:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
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.

**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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.