

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BRENDA MILNER**  
Claimant

**APPEAL 21A-UI-09778-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOLDEN AGE PROPERTIES, L.L.C.**  
Employer

**OC: 12/13/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On April 7, 2021, claimant, Brenda Milner, filed an appeal from the March 30, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was discharged from employment with the employer, Golden Age Properties, LLC, for excessive unexcused absenteeism. The parties were properly notified about the hearing held by telephone on June 17, 2021. The claimant participated personally. The employer participated through its hearing representative, Administrator Becky Oposnow, with Jessica Byrn as an employer witness.

**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 was employed full-time as a certified nursing assistant (CNA) beginning on October 23, 2019, and was separated from employment on December 7, 2020, when she failed to report for work for a number of shifts.

Claimant had been dealing with the after effects of a COVID-19 diagnosis since mid-November 2020. Both parties believe claimant's last day of work was November 30, 2020. Claimant was scheduled to work December 2, 2020, but did not call in or report for work as scheduled. After 4:30 p.m., the employer received a fax from claimant's doctor excusing her from work. Claimant was scheduled to work on December 3, 4, and 7, 2020, but did not call in or report for work any of those days. The employer did not hear anything more from claimant after it received her doctor's note. It considered her separation a voluntary resignation based on her failure to call in or report for work.

Claimant had previously been warned about attendance, most recently in mid-November 2020. There was a dispute between the parties about the circumstances surrounding that warning, but not that the warning had been administered and communicated to claimant.

The employer maintains an attendance policy that requires notice at least two hours in advance of a missed shift, though it prefers to have four hours' notice. It also maintains a policy that three no call/no shows results in termination of employment.

### 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.

Since the employer's policy calls for discharge upon three no-call/no-show absences, rather than considering the separation a voluntary quitting of employment as required by the rule, the separation was a discharge and not a quit.

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 v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982); *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*, 734 N.W.2d 554. 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) (emphasis added); 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*, 321 N.W.2d 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," or

because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d 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*, 350 N.W.2d 187. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d 6. 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*, 350 N.W.2d at 191; *see also Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

Here, claimant’s absences in December 2020 were related to illness, which constitutes a reasonable ground for her absences. However, they were not properly reported; therefore, they were unexcused. Claimant testified that no one at the employer contacted her after she sent in her doctor’s note, but she was under an obligation to make sure that her absences were properly reported and that she kept the employer apprised of her status if she was unable to work. She did not do so. She admitted she contacted no one at the employer on December 2, 2020, or at any time thereafter. She had recently been warned about absences, and was aware that her absences were an issue for the employer. The employer has demonstrated that claimant engaged in job-related misconduct when she had excessive, unexcused absences, even after she was warned about the same.

**DECISION:**

The March 30, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



---

Alexis D. Rowe  
Administrative Law Judge

June 30, 2021  
Decision Dated and Mailed

ar/mh