

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMES C NELSON**

Claimant

**FARM & HOME BUILDERS INC**

Employer

**APPEAL 21A-UI-01644-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/20**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On December 16, 2020, the claimant, James C. Nelson, filed an appeal from the December 8, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on February 23, 2021. The claimant, James C. Nelson, participated. The employer, Farm & Home Builders, participated through Danny Oppenheim, President; John Abramovich; Vice President; and Abbey Kozitza, Company Secretary.

**ISSUE:**

Was claimant James C. Nelson discharged from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a service tech, from July 24, 2017, until June 5, 2020, when he was discharged from employment for attendance and unsatisfactory work performance.

Claimant's 77-year-old mother, for whom he is a primary caretaker, was exposed to COVID-19 in early June. Claimant reported this to Oppenheim, who instructed him to quarantine and stay away from work until he had a statement from a medical provider that his mother was COVID-free. On June 5, 2020, Claimant returned to work with a statement clearing his mother of COVID. That day, Oppenheim told him that his services were no longer needed. When Claimant asked why, Oppenheim told him it was because he was not doing his job.

Claimant had issues with attendance during his last year and one-half of employment. He missed numerous days in both 2019 and 2020 due to personal illness. Claimant was also late to assignments on occasion. Claimant explained that he did not schedule his own assignments and often he would have twelve jobs scattered all across town scheduled in one day. He also had a tendency to fix broken items at a customer's home in addition to the one task he was sent

to complete. He was counseled about that issue and stopped fixing the additional items after February 2020.

Claimant had several customers complain about him. One customer complained that he left old windows and debris in his landscaping, potentially endangering his cat. Another customer complained that immediately after claimant had been at his home, several thousand dollars went missing. Claimant admits his wife took this money, and it was returned within several hours of claimant being notified it was missing.

Claimant received a warning on October 30, 2019, for not doing his job in a timely manner and for not showing up to jobs. His discharge letter notified him that he was being let go because of unsatisfactory work performance.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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:

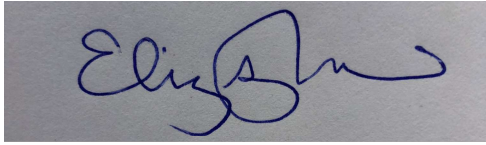
(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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*, 321 N.W.2d at 6; *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 at 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."

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. In this case, claimant was discharged for a combination of issues. His attendance was certainly less than optimal. However, nearly all of his absences appear to have been due to properly-reported illness. Claimant also failed to show up to assignments in a timely manner, but claimant provided unrefuted testimony that this was not his fault, as he was over-scheduled and spread too thin. Finally, claimant was discharged due to customer complaints. While an employer is certainly within its rights to discharge an employee due to an unhappy customer, claimant does not appear to have been warned before about either customer complaints or the issue underlying the most recent customer complaint. The administrative law judge finds that the employer has not met its burden of establishing that claimant was discharged due to disqualifying, job-related misconduct. Benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The December 8, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is written over a light gray rectangular background.

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Elizabeth A. Johnson  
Administrative Law Judge  
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March 3, 2021  
Decision Dated and Mailed

lj/kmj