

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GABRIELA MEDRANO
Claimant

APPEAL 22A-UI-08116-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 03/06/22
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer, West Liberty Foods LLC, filed an appeal from the March 24, 2022, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion she was discharged for non-disqualifying conduct. The parties were properly notified of the hearing. A telephone hearing was held on May 13, 2022. The claimant participated and testified. The employer participated through Human Resources Manager Mira Zamudio. Official notice was taken of the administrative records. Exhibits 1, 2, and 3 were received into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant was overpaid benefits?

Whether she is excused from repaying these benefits due to the employer's non-participation at factfinding?

FINDINGS OF FACT:

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

The claimant, Gabriela Medrano, worked for the employer from November 8, 2008, until her employment ended on February 26, 2022, when she was discharged. The claimant's immediate supervisor was Production Supervisor David Meinccke. The claimant's schedule began at 7:30 a.m. and had a varying end time.

The employer has an attendance policy. The attendance policy states an employee can notify the employer up to two hours after the start of their shift to report an absence. However, the absence is counted as a point against their record. If the expected absence is not reported for more than two hours after the start of their shift, it is a point and a half. Any type of tardy or early

out results in receiving a half point. After an employee has received six points, then they are terminated. Employees can view their point totals on an application.

On January 15, 2022, the claimant called in at 5:40 a.m. and informed the employer she would not be working that day because of the weather.

On January 22, 2022, the claimant left early at 12:14 p.m. The claimant informed the employer that she had to leave because of the weather.

January 24, 2022, the claimant informed the employer at 7:11 a.m. that she was ill and would not be working that day.

January 25, 2022, the claimant informed the employer at 6:18 a.m. that she was ill and would not be working that day.

February 2, 2022, the claimant informed the employer at 6:32 a.m. that she was ill and would not be working that day.

On February 4, 2022, the claimant informed the employer at 6:37 a.m. that she was ill and would not be working that day.

On February 17, 2022, the claimant informed the employer at 6:45 a.m. that she was ill and would not be working that day.

On February 26, 2022, the employer terminated the claimant because she had exceeded the allotted points under its attendance policy. During the hearing, Human Resources Manager Mira Zamudio conceded the claimant was not terminated for an incident of misconduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying circumstances. The overpayment is moot because the claimant is entitled to benefits.

Iowa Code section 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. 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) and (8) provide:

(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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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* 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.

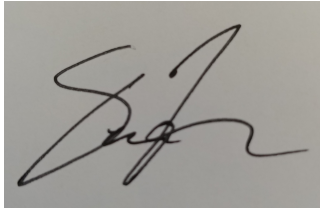
The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited 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).

The employer cannot show the claimant engaged in disqualifying misconduct. Ms. Zamudio conceded as much during the hearing. More is required to disqualify a claimant than merely being terminated according to the employer’s policy. The employer is required to provide a specific report of work-related misconduct to disqualify a claimant. See Iowa Code section 96.5(2)a. See also Iowa Admin. Code r. 24.32(1)a. This is with the idea that unemployment was designed to help employees who have lost their jobs due to no fault of their own. Employees who have engaged in work-related misconduct are disqualified because their misconduct essentially justifies their unemployment.

Furthermore, only two of the attendance incidents described in the findings of facts can be considered as individual instances of misconduct because the remaining instances were properly reported as due to illness. See Iowa Admin. Code r. 871-24.32(7) (excluding instances due to circumstances beyond the claimant’s control from the definition of misconduct.) These two instances occurred months before the claimant’s termination and cannot provide a basis for the claimant’s disqualification. Iowa Admin. Code r. 871-24.32(8) (stating past acts can only be considered in determining the magnitude of the final arguably disqualifying act.) Benefits are granted, provided she is otherwise eligible.

DECISION:

The March 24, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged due to a non-disqualifying reason. The overpayment issue is moot because she is entitled to benefits. Benefits are granted, provided she is otherwise eligible.



Sean M. Nelson
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June 8, 2022
Decision Dated and Mailed

smn/kmj