

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

LAKAYLA L WILLIAMS
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 24A-UI-01024-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/24/23
Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On January 25, 2024, claimant Lakayla L. Williams filed an appeal from the January 23, 2024 (reference 01) unemployment insurance decision that denied benefits, determining claimant voluntarily quit employment on December 8, 2023 through a three-day no-call/no-show. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on February 1, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 10:00 a.m. on Thursday, February 15, 2024. Claimant Lakayla L. Williams personally participated. Employer Good Samaritan Society Inc. participated through LuAnn Brewington, Employment Relations Specialist. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the employer discharged claimant from employment for disqualifying, job-related misconduct.

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on March 21, 2021. Most recently, she worked full-time hours as a dietary aide. Claimant's employment ended on December 8, 2023, when the employer discharged her for failing to come to work.

Claimant last reported to work on Thursday, November 23, 2023. That day, claimant was not feeling well at work and was having issues performing her duties, so Connie (her supervisor) drove her home. Once claimant and Connie got to claimant's home, Connie instructed claimant's husband to take claimant to the hospital. Claimant and her husband went to the emergency room, where claimant received medical treatment and instructions to rest for two days. Claimant contacted Connie to tell her what the doctor said, and Connie said she would need a note releasing claimant to return to work.

Claimant saw her doctor on Monday, November 27, to obtain a work release. During that visit, her doctor noticed that claimant continued to experience significant medical issues. Additionally,

claimant was having difficulty responding to questions. Claimant's doctor diagnosed her with a urinary tract infection and began the process to have claimant admitted into the hospital. The doctor called claimant's husband and asked him to take her to the hospital. He also gave her husband a note stating claimant had not been released to return to work and was being admitted to the hospital. Claimant's husband took this note to Connie on Tuesday, November 28.

Claimant's health continued to deteriorate. Her kidneys failed, she suffered cardiac problems, and she went into a coma. On or about November 28, claimant was transported to a hospital in Wisconsin for IV antibiotics and other medicine. She emerged from the coma on December 3 or December 4, and soon after, she asked for her cell phone so she could contact Connie. Claimant told Connie that she was in the hospital in Wisconsin and had been in a coma. Connie then told claimant she had given her husband additional paperwork to fill out, but claimant told her that her husband did not have a driver's license and could not cross the river into Wisconsin to bring her the paperwork. Connie did not have any alternative methods of getting claimant this paperwork, and she told her the paperwork must be completed by December 8.

Claimant spoke with Connie again on December 8, and Connie told claimant that she was discharged. Two days later, claimant was released from the hospital and brought home to Iowa. She contacted Connie and let her know that she was out of the hospital and waiting to be released to work. Connie told her the employer had no job openings at that time, and claimant's job duties were being split among her former coworkers.

Claimant's doctor released her to return to work on Wednesday, January 10, 2024. The doctor did not impose any restrictions on claimant's ability to work, and claimant does not have any health-related limitations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. She was able to and available for work effective January 7, 2024.

Separation from Employment

The first issue is whether claimant was discharged for disqualifying, job-related misconduct. Iowa Code section 96.5(2)(a) and (d)(9) provide:

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 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 even 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:

(9) Excessive unexcused tardiness or absenteeism.

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).

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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).

The employer must prove two elements to establish misconduct based on absenteeism. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). 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," *Higgins*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

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 9; *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. See *Gaborit*, 734 N.W.2d at 555-558.

A good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). See *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony to be more credible than the employer's testimony. Claimant testified based on her firsthand knowledge of the conversations she had with Connie and the events she experienced. In contrast, Brewington had no firsthand knowledge of the events and had not even talked to anyone with firsthand knowledge until the time of the hearing, when she had the opportunity to speak with claimant. Firsthand testimony is inherently more reliable than testimony that is based off of information obtained from other sources.

The credible evidence in the record shows that claimant communicated with Connie, her supervisor, on December 4. Connie knew claimant was in the hospital in Wisconsin, had just emerged from a coma, and was dealing with serious medical issues. Additionally, claimant informed Connie that her husband was not able to bring her the form the employer required her to fill out and deliver back to them by December 8, 2023—and claimant herself obviously could not complete this errand. The employer discharged claimant on December 8 for three consecutive no-call/no-show absences, but this was disingenuous—Connie knew claimant was in the hospital and actively receiving necessary medical treatment. Additionally, had it been imperative for claimant to report her absences each day that she remained hospitalized, it would have made sense for Connie to mention that during the conversation on December 4. Claimant, as a reasonable employee, believed the employer knew she would not be at work because she was in the hospital. The employer has not established it discharged claimant for any disqualifying reason. Benefits are allowed based on claimant's separation.

Ability to / Availability for Work

The next issue I must determine is whether claimant is able to and available for work. Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23 provides in relevant subparts:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(2) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed...

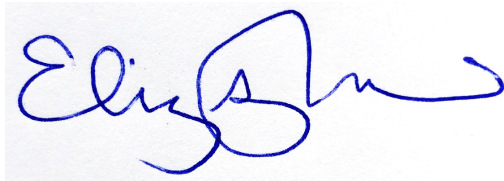
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, claimant was released to return to work on January 10, 2024. Until that point, claimant remained under the care of her physician and was not available under the meaning of the administrative rules. Accordingly, benefits are denied from December 24, 2023 through January 6, 2024. Benefits are allowed effective January 7, 2024.

DECISION:

The January 23, 2024 (reference 01) unemployment insurance decision is modified in favor of the claimant/appellant. The employer discharged claimant from employment for no disqualifying reason. Benefits are allowed based on the separation, provided she is otherwise eligible.

Claimant was not able to and available for work due to illness and being under a doctor's care and not being released to work between December 24, 2023 and January 6, 2024. Benefits are allowed effective January 7, 2024 based on the able and available status, provided claimant is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

February 20, 2024
Decision Dated and Mailed

lj/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.

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.