

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MATTHEW SWANSON**  
Claimant

**KEYSTONE ELECTRICAL MFG CO – LP2**  
Employer

**APPEAL 21A-UI-08424-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/14/21**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 18, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his discharge being due to excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on June 8, 2021. The claimant participated. The employer participated through Human Resources Manager Deanne Rowland. Exhibits 1, 2, 3, 4, and 5 were admitted into the record. Official notice was taken of the administrative record.

**ISSUE:**

Whether the claimant's separation from employment is disqualifying?

**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 full-time mounting specialist from July 9, 2018, until this employment ended on February 12, 2021, when he was discharged. The claimant reported to three immediate supervisors Mounting Area Supervisor Li Lui, Mounting Area Supervisor Ali Hassan and Area Supervisor Emily Inthabounh. The claimant's schedule was from 6:00 a.m. to 2:30 p.m. Monday through Friday.

The employer has an attendance policy. The policy is progressive in its issuance of disciplinary warnings with the corresponding following stages and corresponding point thresholds: verbal warning (10 points), a first written warning (16 points), a second written warning / decision making leave (21 points) and termination (30 points and above). Failure to clock in an out are assessed one point. Tardy and early departure is assessed at one point for each two hour increment that commences after the employee is absent. For instance, if an employee's absence exceeds six hours, then that absence results in four points being assessed. The attendance policy requires the employee to keep his supervisor apprised of his status throughout the day. The policy states to request time off from the supervisor as far in advance

as possible. The points roll off a year after their occurrence. The claimant received a copy of the attendance policy. (Exhibit 5)

Every six months employees are given a copy of a spreadsheet regarding their attendance points. During those meetings, Owner President Fred Buie told the claimant he was a great employee, but he needed to keep his points down. Mr. Buie told the claimant he was being given extra leeway given his excellent work. The claimant received performance related raises.

On February 20, 2020, the claimant received a first written warning regarding his accumulation of attendance points.

On March 19, 2020, the claimant received a second written warning regarding his accumulation of attendance points.

On February 1, 2021, the claimant left the employer's property between 6:50 a.m. and 7:50 a.m. Human Resources Director Deanne Rowland checked the security cameras to verify the claimant was absent during that period later in the day. The claimant had not clocked out either. Ms. Rowland issued the claimant a corrective action on that day. On the corrective action, Ms. Rowland wrote, "[The claimant] will get all time off pre-approved by a supervisor. At this point in time it will be [Mr. Hassan]. [Sic] Up to and including termination." (Exhibit 2)

On February 5, 2021, the claimant handed a time off request to Mr. Lui on his way out of the of the plant at 1:30 p.m. The employer provided a copy of the time off request that was submitted as a flex time request to be gone for one hour on that day. The claimant promised to work on the following Saturday at 6:00 a.m. for an hour to make up this difference. The employer provided a copy of the time off request. (Exhibit 3)

On February 10, 2021, the claimant left a flex time request on Ms. Inthabounh's desk at noon to depart work two hours early. On the flex time request, the claimant promised to begin work on February 11, 2021 and February 12, 2021 at 5:00 a.m. on both days. The employer provided a copy of the time off request. (Exhibit 3) The claimant was sick with respiratory symptoms. Both Mr. Hassan and Ms. Inthabounh were aware that the claimant was ill that day. Earlier that day, the claimant told Ms. Inthabounh that he was going to leave when a particular assignment was over because he was not feeling well.

On February 12, 2021, Mr. Hassan, Mr. Buie, and Ms. Rowland conducted the claimant's termination meeting. The claimant was terminated because of the two requests he made to be away from work on February 5, 2021 and February 10, 2021. The employer provided a copy of the claimant's termination notice. The termination notice states the claimant "has repeatedly taken time off without notice or approval, [the claimant] was instructed to get time pre-approved by a supervisor in a February 1, 2021 meeting. Since this meeting, [the claimant] has failed to do so on at least two occasions on February 5, 2021 and February 10, 2021." (Exhibit 1)

#### **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 conduct.

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*, 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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, 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 believable evidence; 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant’s version of events to be more credible than the employer’s recollection of those events.

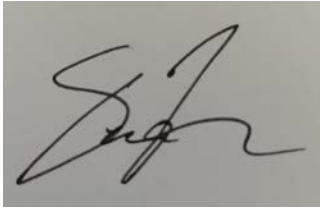
Iowa Admin. Code r.871-24.32(8) provides:

(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.

An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Ms. Rowland acknowledged the claimant’s final absence was due to illness. The administrative law judge finds the claimant’s contention credible that he informed Ms. Inthabounh of his intent to leave due to illness prior to leaving the flex time request on her desk on February 10, 2021. Since the claimant’s request was due to illness and it was reported prior to his departure, this incident cannot constitute misconduct. As a result, the employer cannot show the claimant was terminated for a current act of misconduct to satisfy Iowa Admin. Code r.871-24.32(8). The claimant was terminated due to non-disqualifying conduct. Benefits are granted, provided he is otherwise eligible.

**DECISION:**

The March 18, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to non-disqualifying conduct. Benefits are granted, provided he is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

---

Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

June 29, 2021  
Decision Dated and Mailed

smn/scn