

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JEANETTE KUEHL**

Claimant

**APPEAL 22A-UI-00082-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT MEDICAL CENTER INC**

Employer

**OC: 10/10/21**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism  
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 claimant, Jeannette Kuehl, filed an appeal from the November 17, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she had been discharged for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on January 20, 2022. The claimant participated. The employer participated through Human Resources Representative Jamie Ceasar and Account Manager Kristen Mather. Exhibits A, B and C were received into the record.

**ISSUES:**

Whether the claimant's separation from employment is disqualifying?

Whether the claimant has been overpaid benefits? Whether she is excused from repaying those benefits due to the employer's non-participation at fact-finding?

**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 patient account representative from May 18, 2015, until this employment ended on October 8, 2021, when she was discharged. The claimant worked an eight-hour shift Monday through Friday with a variable start time from 7:00 a.m. to 9:00 a.m. The claimant's immediate supervisor was Account Manager Kristen Mather.

The employer has an attendance policy that states if someone is a no-call / no-show two times within a 12-month period, then the employee is considered to have voluntarily resigned from his or her position. It instructs employees to inform the employer of an anticipated absence on the previous working day.

On October 5, 2021, the claimant did not arrive to work as scheduled. The claimant overslept. Account Manager Kristen Mather went to the claimant's home with two police officers to perform a wellness check at 10:00 a.m. The claimant offered to work from 2:00 p.m. to 6:00 p.m. that day and to finish the remainder of her shift on the following Saturday, October 9, 2021. Ms. Mather told the claimant that she would not be able to make up the hours.

On October 11, 2021, the claimant did not arrive to work as scheduled. After 9:10 a.m., Coordinator Anna Beck called the claimant to determine what was going on. The claimant replied that she needed to evaluate whether her job was still a good fit. During the hearing, claimant explained that she was upset about how Ms. Mather had arrived at her house with two police officers on October 5, 2021.

On October 11, 2021, the claimant was sent a letter stating the employer considered her to have voluntarily quit employment due to the two absences occurring on October 5, 2021 and October 11, 2021. The claimant provided a copy of the termination notice. (Exhibit B)

The claimant had not received warnings regarding her attendance in the past.

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

At the outset, the administrative law judge will explain why the claimant did not quit but was discharged.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "l," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant's statement that she was considering whether her job was still a good fit on October 11, 2021 is not sufficient to demonstrate that she intended to sever her employment. If an employer has a rule that is consistent with Iowa Admin. Code r. 871-24.25(4), then the

employer can consider three no-call/no-show occurrences as the claimant's voluntary resignation. The employer's policy is not consistent with that rule. Nor did the claimant's absence reach the level to satisfy that rule even if the employer's policy was consistent. Given these circumstances, this case is properly analyzed as a discharge case.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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).

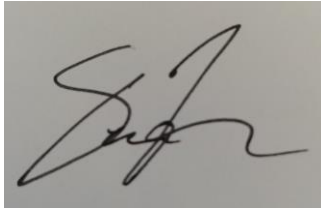
An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work.

The administrative law judge acknowledges this is a close case. The claimant's absences on October 5, 2021 and October 11, 2021 are not excused because she did not call in prior and she did not give a valid reason beyond her control for not being at work. These are also serious attendance incidents. However, these attendance incidents need to be examined with the context of the claimant's full attendance history. The claimant had been working for the employer for years. In all of that time, the claimant had no attendance occurrences of any kind. The employer also never warned her that future attendance incidents could result in her termination. Furthermore, the claimant offered to mitigate the burden on the employer's system by coming on October 5, 2021 and to make up these hours on the following Saturday. Given these circumstances, the administrative law judge finds the claimant was not excessively absent to justify disqualification. The employer is permitted to terminate her for these circumstances, but the pattern of absenteeism here is insufficient to show the claimant intentionally disregarded the employer's interest. Benefits are granted.

Since the claimant is entitled to benefits, the overpayment issue is moot.

**DECISION:**

The November 17, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged due to non-disqualifying conduct. Benefits are granted, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
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February 15<sup>th</sup>, 2022  
Decision Dated and Mailed

smn/rs