

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STACEY J. MASCHMANN**  
Claimant

**APPEAL 21A-UI-09173-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BWC INDUSTRIAL SERVICES LC**  
Employer

**OC: 01/31/21  
Claimant: Appellant (1)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On March 29, 2021, the claimant/appellant filed an appeal from the March 19, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant being discharged for job-related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 2, 2021. Claimant personally participated in the hearing. Employer participated through Jimmy Noethe.

**ISSUE:**

Was claimant discharged for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 26, 2018. Claimant last worked as a full-time administrative assistant. Claimant was scheduled to work Monday-Friday 7:30 a.m. until 4:00 p.m. Throughout the course of claimant's employment claimant was tardy to work or would leave work prior to the end of her scheduled shift. (See Exhibit 1, page 14). The employer had a written policy notifying employees that they are required to arrive at work by the scheduled start time and if they are unable to report for work for any reason that they were required to notify their supervisor before regular starting time. (Exhibit 1, pg. 6). The company policy also notifies employee that excessive absences could result in disciplinary action, up to and including termination." (Exhibit 1, pg. 7). On at least one prior occasion the employer had verbally warned the claimant that her unexcused tardiness and leaving early would lead to termination.

Also during claimant's employment her demeanor towards customers and co-workers became an issue. The claimant received a verbal warning about her general abrasive demeanor.

On January 21, 2021, claimant left work early due to her boyfriend's birthday. Claimant was required to get prior approval for leaving early from her supervisor, Jimmy Noethe. Claimant did not ask Mr. Noethe if she could leave early and the employer considered this early leave

unexcused. Claimant was separated from employment on January 26, 2021, when she was discharged from the employer for a combination of her attendance and general demeanor at work.

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

For the reasons that follow, the administrative law judge concludes the claimant's general poor demeanor does not rise to a level that would constitute job-related misconduct. However, the claimant was discharged from employment due to job-related misconduct in relation to her excessive absenteeism.

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 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The employer provided evidence the claimant arrived late/left early/called in fifty-nine (59) different times throughout her employment. The employer and claimant agree that claimant received a verbal warning for her attendance. The parties agree that claimant left work early on January 21, 2021 for her boyfriend's birthday and that she did not get prior approval prior to her leaving for the day.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for unemployment 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. Although the claimant worked over her required 40 hours per week, she still needed to get pre-approval before she left before the end of her regularly scheduled shift. The employer has established that the claimant was warned that further improperly reported unexcused absences could result in termination of employment and the final early leave was not properly excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The March 19, 2021, (reference 01) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

June 15, 2021  
Decision Dated and Mailed

cs/scn