

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VINCENT BEAMAN**  
Claimant

**APPEAL 21A-UCFE-00018-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VA CENTRAL IA HEALTHCARE**  
Employer

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

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On June 7, 2021, claimant, Vincent Beaman, filed an appeal from the May 28, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, VA Central IA Healthcare, discharged claimant for excessive, unexcused absenteeism. The parties were properly notified about the hearing held by telephone on July 19, 2021. The claimant participated personally. The employer did not participate.

**ISSUE:**

Did the employer discharge claimant for job-related misconduct?

**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 food service worker beginning on September 16, 2018, and was separated from employment on February 22, 2021, when he was discharged.

The employer hired claimant knowing that he had a number of disabling conditions. In the last year of his employment, he dealt with the effects of these conditions, and incurred absences as a result of them. He always called in and informed the employer that he needed to use sick leave according to the employer's absence notification policy.

In January 2021, claimant was ill. He feared he may have COVID. He had also exhausted his protected leave. There had been a recent leadership change in the department, as well. The past director had discussions with claimant regarding his attendance, but indicated to him that the department was interested in keeping him employed because he was a good employee. She indicated that future absences may result in additional suspensions, but not termination.

Claimant was absent from January 6 through 15, 2021. He returned to work January 16, 2021. He called out sick according to the employer's absence notification policy each day, and informed the employer that he was calling out absent due to illness. Very shortly after he returned to work, the new director issued him a letter indicating he was being considered for

discharge due to attendance. On February 22, 2021, claimant met with the director and she issued him the termination decision via letter.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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 Dept 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 Dept 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 Dept of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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 Dept 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*, 350 N.W.2d at 192. 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.

Claimant was absent due to illness during his final incident of absence. That illness was properly reported to the employer. He has established that his absences were properly reported and due to illness or other reasonable grounds. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Because his absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The May 28, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.



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Alexis D. Rowe  
Administrative Law Judge

July 27, 2021  
Decision Dated and Mailed

ar/lj