

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

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**ZOYA M SIDAMBA**  
Claimant

**ADECCO USA INC**  
Employer

**APPEAL 24A-UI-03901-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/10/24  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer, ADECCO USA Inc., filed an appeal from a decision of a representative dated April 8, 2024, (reference 02) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on May 2, 2024. The claimant, Zoya Sidamba, participated personally. The employer was represented by Equifax Hearing Representative Linda Green and participated through Manager Brittney Garcia. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether the claimant was discharged for disqualifying, job-related misconduct.  
Whether the claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.  
Whether any charges to the employer's account can be waived.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The employer is a temporary employment firm. The claimant worked for this employer from November 8, 2021, to March 8, 2024, when she was discharged by the employer. Most recently, the claimant worked full-time hours as a customer service representative in an assignment at Accenture (Client). The claimant worked remotely from home from 8:45 a.m. to 5:15 p.m. Monday through Friday.

The employer uses a point system or no-fault absenteeism policy, wherein any unanticipated absence is considered "unexcused." Any unanticipated absence or tardy must be reported to the employer's attendance hotline prior to the start of the employee's shift. Employment is terminated if an employee receives more than five attendance points in a rolling six-month period. After six months, points are removed from employees' attendance records. The claimant was familiar with the employer's attendance policy.

Throughout the claimant's assignment with Accenture, the client regularly issued software updates to its employees that would sometimes affect the employees' ability to login to work. When employees had trouble logging in, they were told to call their team-lead and then call the IT department to receive assistance with their computer issues. The claimant experienced problems logging in approximately twice per month. Each time she logged in late, she notified her team-lead and then contacted the IT department as instructed. However, despite following Accenture's instructions, each time she logged in late she received an attendance point.

On October 4, 2023, the claimant was at or near five attendance points in the rolling six month period. On that day, Accenture emailed the claimant to notify her of her points, but it did not warn the claimant that further attendance violations could result in termination of her employment. By the beginning of February 2024, the claimant was again at or near five attendance points.

On February 12 and February 19, the claimant experienced technical difficulties logging into her computer. The claimant notified her shift-lead and called the IT department. However, the technical difficulties resulted in the claimant logging in late to her shift. On February 22, 2024, the claimant's supervisor met with claimant and issued her a written warning concerning her attendance violations. The claimant's supervisor told the claimant she was doing well in her position, but that she needed to improve getting logged into work on time.

After the coach and counsel session, the claimant had no other attendance violations. On March 8, 2024, the employer called and informed the claimant that her assignment was being terminated effective immediately due to excessive, unexcused absences and tardiness in violation of the employer's attendance policy. The claimant and the employer had no further contact after the claimant's separation from employment on March 8, 2024.

The claimant's administrative record reflects that the claimant filed her original claim for benefits with an effective date of March 10, 2024. The claimant has filed weekly claims and has received benefits for seven weeks between March 10 and May 4, 2024. The claimant has received total unemployment insurance benefits of \$2,940.00. The employer did not participate in the fact-finding interview with Iowa Workforce Development.

## **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 section 96.5(2)a and (d)(9) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp’t Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191. When a claimant does not provide an excuse for an absence, the absence is deemed unexcused. *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003). 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.

Conduct asserted to be disqualifying misconduct must be current. *West v. Emp’t Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). Whether the act is current is measured by the time elapsing between the employer’s awareness of the misconduct and the employer’s notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

The current act requirement prevents an employer from saving up acts of misconduct and springing them on an employee when an independent desire to terminate arises. For example, an employer may not convert a layoff into a termination for misconduct by relying on past acts. If an employer acts as soon as it reasonably could have under the circumstances, then the act is current. A reasonable delay may be caused by a legitimate need to investigate and decide on a course of disciplinary action.

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.*

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 version of events to be generally more credible than the employer’s version of those events, as the claimant was the only individual who testified with direct, first-hand knowledge of the events and circumstances at issue.

The employer has not established that the claimant had excessive absences or tardiness that would be considered unexcused for purposes of unemployment insurance eligibility. On February 22, 2024, the employer issued the claimant a written warning for having logged into work late on February 12 and February 19, 2024. That same day, the claimant’s supervisor met with the claimant and coached and counseled her about her attendance. After receiving the written warning on February 22, the claimant had no further attendance violations. As the claimant had already been disciplined for her tardiness on February 12 and 19, no final or current incident of unexcused tardiness occurred which establishes work-connected misconduct. Without a current or final act of misconduct, the history of other absences and tardiness need not be examined. The claimant was discharged for no disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.

Because the claimant’s separation was not disqualifying, the issues of overpayment, repayment, and charges are moot.

**DECISION:**

The April 8, 2024, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment on March 8, 2024, for no disqualifying reason. The claimant is allowed benefits, provided she remains otherwise eligible. The issues of overpayment, repayment, and charges are moot.



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Patrick B. Thomas  
Administrative Law Judge

May 15, 2024  
Decision Dated and Mailed

pbt/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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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.