IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU

MADISON T BELTRAN Claimant **PELLA CORPORATION** Employer	**APPEAL NO. 23A-UI-04879-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/09/23** **Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On May 11, 2023, the employer filed a timely appeal from the May 1, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 6, 2023 for no disqualifying reason. After due notice was issued, a hearing commenced on May 30, 2023, but had to be continued because the claimant had not received the employer's voluminous Exhibit 4. The hearing was continued to June 15, 2023, but had to be continued to June 19, 2023, due to the employer not receiving the claimant's exhibits. Madison Beltran (claimant) appeared on all three dates. Cole Silver represented the employer on all three dates. On June 19, 2023, the claimant, Mr. Silver and employer witness Reagan Melton testified. Exhibits 1 through 4, A, B and C were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
Madison Beltran (claimant) was employed by Pella Corporation as a full-time Operator 1 from March 2022 until April 5, 2023, when the employer discharged her for attendance. Though the claimant was assigned to the 7:00 a.m. to 3:10 p.m. shift, the employer regularly required the

claimant to work overtime hours prior to the shift, with a 4:50 a.m. start time. Though the claimant's designated work days were Monday through Friday, the employer regularly required the claimant to work a Saturday overtime shift.

If the claimant needed to miss work, the employer's attendance policy required that the claimant notify Department Manager Mike Buckley or Production Coordinator Si Wellington no later than an hour after the scheduled start of the shift. The employer accepted a telephone call, text message or email as acceptable forms of communication. The employer does not solicit or requirement information the reason for the absence. Under the employer's policy, the employer considers absences within 12-month rolling period when determining discipline for attendance issues. The attendance policy was included in the employee handbook and corrective action guidelines the employer provided to the claimant at the start of the employment. The claimant was at all times aware of the absence reporting requirement.

The claimant disclosed at the start of the employment that she was dependent on prescribed psychotropic medications to treat mental health diagnoses. The claimant continued under a prescription medication regimen throughout the employment.

On May 20, 2022, the Department Manager spoke to the claimant about her attendance. As part of that discussion the employer temporarily provided the claimant with a 5:50 a.m. start time. After a month, the start time reverted to 4:50 a.m.

The employer considered several absences from 2022 and when making the decision to discharge the claimant from the employment. Most of the absences occurred between June 7 and July 1.

On June 7, the claimant was late due to a lack of transportation .

On June 24, the claimant was schedule to work at 4:50 a.m. but did not report until 10:45 a.m. The claimant notified the employer at 7:09 a.m. The claimant had overslept and then needed to locate a ride to work.

On June 25, the claimant was an hour late for work due to a lack of transportation. The claimant contacted the employer at 5:18 a.m.

On June 28, the claimant was absent due to illness and with proper notice to the employer.

On June 30, the claimant was five minutes late due to transportation issues.

On July 1, the claimant was an hour late for personal reasons. The July 1, 2023 absence triggered a reprimand for attendance.

After the July 1 tardiness, the next absence that factored in the discharge occurred on December 5, 2022. On December 5 and 6, the claimant was absent due to illness and provided timely notice to the employer. Though the December absences were due to illness and properly reported to the employer, the employer issued a Correction Action Letter to the claimant on December 15, 2022 for attendance.

The absence that factored in the discharge occurred on January 4, 2023. On that day, the claimant was late for her 4:50 a.m. start due to oversleeping. The claimant did not contact the employer until 7:01 a.m. At that time, the production coordinator offered to use the claimant's accrued vacation benefit or "flex" to cover the absence, which would allow the claimant to avoid incurring an attendance point. However, the claimant started she would just "take the point." The employer coded the absence as being due to personal business. Though the claimant asserts she woke up late and sick, the claimant made no mention of illness when she contacted the employer.

On January 11, 2023, the employer issued a Corrective Action Letter to the claimant. The employer explicitly told the claimant: "*Madison, your job is in jeopardy*" and warned that additional absences could lead to discharge from the employment. The employer read the reprimand to the claimant, as the employer had read the previous reprimands to the claimant. The claimant signed to acknowledge each of the written reprimands when given.

The final absence that triggered the discharge occurred on April 3, 2023, when the claimant was late for her 4:50 a.m. shift. The claimant reported for work at 5:54a.m. At 5:01 a.m., the claimant sent a text message to the production coordinator to let him know she had overslept and would be late for work. The claimant asked to use an hour of accrued vacation in connection with the absence. The production supervisor told the claimant she could use the accrued vacation benefit, but that the absence would be coded as an absence for personal business. In other words, the absence would be deemed unexcused. Until March 28, 2023, the employer had allowed employees to avoid discipline for tardiness if the employee used accrued vacation time to cover the absence. On March 28, 2023, the employer announced it would thereafter consider late arrivals for disciplinary purposes of discipline regardless of whether the employee used vacation benefits in connection with the late arrival. While the claimant asserts she was not present for the start-up meeting when the change was announced, the claimant's timecard record indicates she was on the clock and should have been present for the start-up meeting.

Though the claimant attributes the oversleeping incident to changes in her medication regimen, the claimant simply overslept. Two months earlier, the claimant's provider had changed one or more prescribed psychotropic medications. About two weeks before the absence, the provider increased on or more of the medication doses. Despite these changes the claimant had continued to report for work on time until the oversleeping incident on April 3, 2023.

In response to the late arrival on April 3, 2023, the employer suspended the claimant from the employment pending a decision regarding whether she would be allowed to continue in the employment. On April 5, 2023, the employer prepared a letter discharging the claimant from the employment. On April 6, 2023, the employer phoned the claimant and told her she was discharged from the employment.

The claimant established an original claim for benefits that was effective April 9, 2023 and received $2,755.00 in benefits for five weeks between April 9, 2023 and May 13, 2023. Pella Corporation is the sole base period employer.

On April 27, 2023, an Iowa Workforce Development deputy held a fact-finding interview that addressed the claimant's separation from the employment. The employer had notice of the fact-finding interview via the notice mailed to the employer's representative, Employers Edge, L.L.C. on April 21, 2023. At the time of the fact-finding interview, the deputy called the employer phone number of record. When no one answered, the deputy left a voicemail message in which the deputy requested a return phone call and stated appeal rights. Neither the employer nor its agent participated in the fact-finding interview. The claimant participated in the fact-finding interview by making a verbal statement. The claimant provided a candid statement without intentionally mispresenting materials facts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

> 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 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. Misconduct by an individual includes but is not limited to all of the following:

…
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
…
(9) Excessive unexcused tardiness or absenteeism.
…
(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. For the purposes of this rule, “misconduct” is defined as 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 a 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. Misconduct by an individual includes but is not limited to all of the following:
…
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

…
(9) Excessive unexcused tardiness or absenteeism.
…

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence establishes a discharge for misconduct in connection with the employment. The evidence in the record establishes unexcused tardiness oversleeping and/or due to transportation issues, matters of personal responsibility, on June 7, June 24, June 25, June 30, July 1, January 4, and April 3. The evidence establishes absences due to illness and properly reported to the employer on June 28, December 5 and December 6, which absences were excused absences under the applicable law and cannot be considered against the claimant when determining unemployment insurance benefit eligibility. The claimant's unexcused absences were excessive. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides, in pertinent part:

> 7. Recovery of overpayment of benefits.
>
> a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

The claimant received $2,755.00 in benefits for five weeks between April 9, 2023 and May 13, 2023, but this decision disqualifies the claimant for those benefits. Therefore, the benefits the claimant received are an overpayment of benefits. Because the employer had notice of but failed to participate in the fact-finding interview, and because the claimant did not intentionally misrepresent material facts at the fact-finding interview, the claimant is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits. The employer's account will not be charged for benefits for the period beginning May 14, 2023.

DECISION:

The May 1, 2023 (reference 01) decision is REVERSED. The claimant was discharged on April 6, 2023 for misconduct in connection with the employments. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid $2,755.00 in benefits for five weeks between April 9, 2023 and May 13, 2023. The claimant is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits, but is relieved of charges for the period beginning May 14, 2023.

James E. Timberland
Administrative Law Judge

June 26, 2023
Decision Dated and Mailed

rvs

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:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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.

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:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

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.