

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTEO C MAGNUSON
Claimant

APPEAL 21A-UI-10026-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWES HOME CENTERS LLC
Employer

**OC: 02/21/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed an appeal from the March 24, 2021, (reference 01) unemployment insurance decision that allowed benefits based. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2021. Claimant Matteo C. Magnuson participated and testified. Employer Lowe's Home Centers, LLC participated through district merchandising service manager Barbara Tisdell. Employer's Exhibits 1-5 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a merchandising service associate from September 16, 2019, and was separated from employment on February 26, 2021, when he was discharged.

Employer maintains an attendance policy which provides that seven absences in a rolling twelve-month period will lead to an initial warning. Each additional absence in the twelve-month rolling period will lead to a written action, and the eleventh absence will result in discharge. Claimant was aware of the policy.

Claimant was absent on September 10 and 11, 2020, because he was sick. He was absent on November 10, 11, and 12, 2021, again due to illness. Claimant was absent on January 26, 27, 28, 29, due to a death in his family.

Claimant received warnings about his attendance on June 17, September 23, and December 1, 2020. His discharge was prompted by the fact that he was absent on February 4 and 5, 2021. The absence was due to illness and was properly reported. He was notified of his discharge on February 26, 2021. Attendance was the sole reason for the separation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$5,376.00, since filing a claim with an effective date of February 21, 2021, for the 16 weeks ending June 19, 2021, and Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$3,900.00 for the 14 weeks ending June 12, 2021. Employer participated in the fact finding interview through written documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 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.

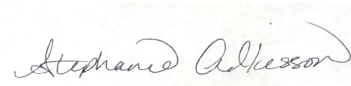
The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited 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).

Based on the evidence presented, the administrative law judge concludes the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot. Because claimant is eligible for regular unemployment insurance benefits, claimant is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

DECISION:

The March 24, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment and chargeability are moot. Claimant is eligible for Federal Pandemic Unemployment Compensation.



Stephanie Adkisson
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July 6, 2021
Decision Dated and Mailed

sa/kmj