

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIMBERLY JUERGENS**  
Claimant

**APPEAL 21A-UI-02702-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREENSTATE CREDIT UNION**  
Employer

**OC: 11/01/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)A – Discharge for Misconduct  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

On January 6, 2021, the claimant filed an appeal from the January 4, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for disqualifying reasons. The parties were properly notified of the hearing. A telephonic hearing was held on March 10, 2021. The claimant, Kimberly Juergens, participated personally. The employer, GreensState Credit Union participated through Sarah Farnsworth. Claimant's exhibits 1 and 2 were received into the record.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant discharged for disqualifying misconduct?  
Was the claimant able and available to work?

**FINDINGS OF FACT:**

Claimant was discharged from employment due to a final incident of tardiness that occurred on November 2, 2020. Claimant was warned in a final warning that she faced termination from employment upon another incident of unexcused tardiness. Prior attendance issues occurred on February 2, 2020; August 29, 2020; September 10, 2020; September 30, 2020; October 14, 2020; October 15, 2020 and October 20, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

As a preliminary matter, the administrative law judge finds that the claimant did not voluntarily quit. For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

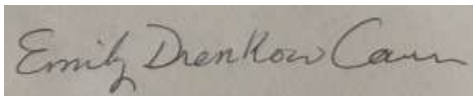
The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited 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). When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). See also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

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. The employer has established

that the claimant was warned that further improperly reported or unexcused attendance issues could result in termination of employment and the final incident of tardiness was not properly reported or excused. The claimant had four attendance issues in less than a week. The employer gave her a final warning, which claimant promptly violated. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The January 4, 2021, 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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Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

March 15, 2021  
Decision Dated and Mailed

Ed/kmj

**NOTE TO CLAIMANT:** You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>