

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MOHAMED MOHAMED**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 21A-UI-01381-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 1, 2020, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 18, 2021. The claimant participated and testified. The employer participated through Senior Human Resources Coordinator Danielle Williams. The employer's proposed exhibits were not entered into the record. The administrative law judge took official notice of the agency record.

**ISSUE:**

Was the claimant discharged for disqualifying 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 production specialist from May 14, 2018, until this employment ended on July 16, 2020, when he was terminated. The claimant's immediate supervisor was Production Leader Jerry Van Brogen.

The employer has an attendance policy called the Dependability Program that requires an employee to report an absence to the employer's call in line or the manager on duty at least 24 hours prior to the start of their shift. The dependability program gives the following point values for each attendance occurrence: reporting more than five minutes late (.5 points), leaving early more than 5 minutes (.5 points), an unscheduled absence with PTO (1 point), an unscheduled absence without PTO (1.5 points), and no call no shows (2 points.) The dependability program states employees are to receive the following corrective action after the corresponding accrual of points: informal counseling (2 occurrences), documented formal counseling (3 occurrences), written warning / commitment letter (5 occurrences), and termination (6 occurrences). The claimant acknowledged receipt of this policy and the employee handbook on May 14, 2018.

On August 23, 2019, the claimant was tardy for the start of his shift.

On August 28, 2019, the claimant used paid time off to cover his unscheduled absence for this shift. The claimant did not give a reason for this absence.

On December 27, 2019, the claimant left early because he had an illness.

On December 28, 2019, the claimant used paid time off to cover an unscheduled absence because he had an illness.

On January 10, 2020, the claimant used paid time off to cover an unscheduled absence. The claimant gave the weather as an excuse for his absence on this day.

On February 3, 2020, the claimant used paid time off to cover an unscheduled absence for this shift due to an illness.

On February 11, 2020, the claimant was tardy for this shift. The claimant did not get give a justification for this tardy incident.

On March 30, 2020, the claimant left early from his shift. The claimant did not provide any justification for leaving early that day.

On March 31, 2020, the claimant was absent for his shift and did not attempt to get it excused. The claimant brought in a doctor's note to excuse this occurrence. The manager left a note indicating doctor's notes do not excuse unplanned absences.

On April 17, 2020, the claimant was absent and used paid time off to cover an unscheduled absence. The claimant said he had a medical provider note excusing him from work that day.

On April 18, 2020, the claimant was absent and used paid time off to cover an unscheduled absence. The claimant did not provide any reason for his absence.

On April 19, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On April 22, 2020, the claimant was absent due to an illness. The claimant did not have paid time off to cover this unscheduled absence.

On April 23, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 6, 2020, the claimant was absent used paid time off to cover an unscheduled absence. The claimant did not provide any reason for his absence.

On May 7, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 11, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 12, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 15, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 16, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 17, 2020, the claimant was absent. The claimant did not have paid time off to cover this unscheduled absence. The claimant did not provide any reason for his absence.

On May 26, 2020, the claimant left early on this day. The claimant reported he was not feeling well.

On June 8, 2020, the claimant used paid time off to cover this unscheduled absence. The claimant said he was attending a funeral on that day. He had not previously provided paperwork for bereavement leave.

On June 9, 2020, the employer sent a certified letter written by Human Resources Leader Jeremy Erickson to his address, informing him that he had received 14 occurrences under the employer's dependability program since June 9, 2019. The letter then informed the claimant his employment was under review for termination. However, the letter excused him for all occurrences he accrued between March 1, 2020 and June 12, 2020.

On June 26, 2020, the claimant was absent and used paid time off to cover an unscheduled absence. The claimant did not provide any reason for his absence.

On July 6, 2020, the claimant was absent and used paid time off to cover an unscheduled absence. The claimant did not provide any reason for his absence.

On July 15, 2020, the employer performed an audit of the attendance of all of its employees and found the claimant to be in violation of the Dependability Program for accumulating 8.5 occurrences outside of the moratorium.

On July 16, 2020, Mr. Van Brogen terminated the claimant based on the audit performed in the previous day.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for willful misconduct.

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). The employer has the burden of proof in establishing disqualifying job misconduct. *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).

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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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.*

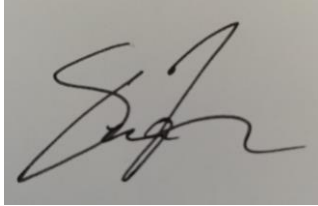
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer’s version of events to be more credible than the claimant’s recollection of those events.

In this case, the claimant claimed every absence at issue was excused due to his illness, despite the fact that this is only given as a reason for several of the occurrences. The administrative law judge does not believe the claimant primarily because of his question regarding whether he received the certified letter on June 9, 2020. The claimant initially denied receiving this letter, but when confronted with the prospect that the administrative law judge would request proof of receipt, he recanted. Such an unexplained departure from his previous stance makes the administrative law judge skeptical regarding his remaining testimony.

The claimant was absent, left early or was tardy a total of 25 times from August 23, 2019 to July 6, 2020. The claimant gave a medical excuse for only five of these incidents. For the remainder, the claimant either did not give an excuse or provided an excuse which would not be a reasonable ground for being absent. After the employer sent him a final warning on June 8, 2020, the claimant had two more unscheduled absences. The claimant engaged in excessive absenteeism. Benefits are denied.

**DECISION:**

The December 1, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Sean M. Nelson  
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March 8, 2021  
Decision Dated and Mailed

smn/lj