

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**LINDA M. WEEKS**  
Claimant

**APPEAL 22A-UI-03948-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EVENTIDE LUTHERAN HOME FOR THE  
AG**  
Employer

**OC: 08/01/21  
Claimant: Respondent (1)**

---

Iowa Code §96.5(2)a-Discharge/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

**STATEMENT OF THE CASE:**

On February 4, 2022, the employer/appellant filed an appeal from the January 25, 2022, (reference 02) unemployment insurance decision that allowed benefits based on claimant being dismissed on December 28, 2021 for excessive absenteeism. However, the absences were due to illness and properly reported. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on March 14, 2022. The hearing was postponed due to the administrative law judge not receiving appellant's exhibits prior to the hearing. A new hearing was scheduled for April 15, 2022. Claimant participated. Employer participated through hearing representative, Thomas Gorman. Present as witnesses were Human Resource Coordinator, Pat Schechinger, Administrator, Amy Schultz, and supervisor, Karen Beam. Administrative notice was taken of claimant's unemployment insurance benefits.

**ISSUES:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Should claimant repay benefits?
- III. Should the employer be charged due to employer participation in fact finding?
- IV. Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 1, 2021. Claimant last worked as a full-time housekeeper. The employer is a skilled care nursing home that requires twenty-four hour care for

residents. Claimant's shift was from 6:30 a.m. until 3:00 p.m. Claimant was separated from employment on December 28, 2021, when she was discharged due to violating the employer's attendance policy.

When claimant was hired she was placed on a three month probationary period. During this period employees are allowed to accumulate three attendance points. An employee accumulates a point for each day they miss of work. If an employee is ill and misses two days in a row the employee only accumulates one point instead of two. At the end of the probationary period if the employee has at least one point remaining they will be allowed to accumulate seven attendance points. If the employee does not have any attendance points left at the end of the probationary period the employee could be terminated. The employer does not have a policy on calling in, however, they prefer if an employee is going to call in for work that they do it prior to their scheduled shift. Additionally they are required to let their supervisor know if their supervisor is working. If the supervisor is not working then they are required to notify the traditional ridge nurse. Claimant was aware of the policy and signed an acknowledge that she received the employer handbook on November 1, 2021.

On December 28, 2021, claimant called in to her supervisor Karen Beam and to the traditional ridge nurse at 4:45 a.m. and notified them she would not be at work because she was ill. Claimant had a cold and was coughing and did not want to get the residents sick.

Claimant previously missed work on December 14, 2021 and December 15, 2021, due to claimant being sick. Claimant notified the traditional ridge nurse prior to her shift.

Claimant left early from work on November 20, 2021, due to being ill. Claimant received permission to leave from her supervisor prior to her leaving.

On December 28, 2021, Ms. Schechinger and Ms. Beam called claimant and notified her she was terminated for accumulating too many attendance points in violation of the employer's attendance policy.

Claimant did not receive any prior verbal or writing warnings for violating the attendance policy.

Claimant filed an additional claim for benefits on December 26, 2021. Claimant's weekly benefit amount is \$354.00. Claimant received benefits related to this separation beginning week ending January 1, 2022 through April 2, 2022. Claimant received a total of \$4, 218.00.

The employer did not participate in the fact-finding interview.

#### **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 § 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(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 Dep't of Job Serv.*, 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.

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). 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.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Accordingly, benefits are allowed and the employer's account shall be charged.

Since claimant is allowed benefits the issues of whether claimant was overpaid benefits and whether employer participated in the fact-finding interview are moot.

**DECISION:**

The January 25, 2022, (reference 02) unemployment insurance decision is AFFIRMED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is subject to charge.

The issues of overpayment and the employer's participation in the fact-finding interview are moot.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a horizontal line extending from the end of the name.

---

Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

April 19, 2022  
Decision Dated and Mailed

cs/mh