

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JUDD E. BORK**  
Claimant

**DEERE & COMPANY**  
Employer

**APPEAL 24R-UI-01171-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/23  
Claimant: Respondent (1)**

---

Iowa Code §96.5(2)a-Discharge/Misconduct  
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 November 27, 2023, the employer/appellant filed an appeal from the November 15, 2023, (reference 01) unemployment insurance decision that allowed benefit based on claimant being dismissed on October 24, 2023, for unsatisfactory work. Not performing to employer's satisfaction is not misconduct. A decision was issued in case 23A-UI-11025-DZ-T. Claimant did not appear and appealed the decision to the Employment Appeal Board (EAB). The EAB remanded the appeal for a new hearing on January 25, 2024. The parties were properly notified about the hearing. A telephone hearing was held on March 18, 2024. Claimant participated. Employer participated through Relations Manager, Meghan Luke. Administrative notice was taken of claimant's exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V. Administrative notice was also taken of claimant's unemployment insurance benefits records, including DBRO.

**ISSUES:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 27, 2013. Claimant last worked as a full-time inspector.

The employer has a policy that states:

“JD Paton considers 3 absences or more in 450 hours worked (straight time plus OT) to be excessive. An absence is any amount of time that has been scheduled for the employee, but is not covered by either actual Attendance, Vacation, PPT, Bereavement, FMLA, Jury-duty, military leave, short-term disability, personal no pay, or some other form of excused absence. Excused absence that do not fit the above categories must be approved by the Employee Relations Manager. An example of an unexcused absence not fitting the above categories could be tardiness or missed work due to poor road conditions. Such examples will be assessed on a case-by-case basis.

An absence is more than 15 minutes unapproved time by your supervisor.

- 3 absences or more in 450 hours worked (straight time plus OT) will result in discipline.” (Exhibit B, pg.1).

Employees are required to call the employer prior to their shift to notify their employer of their absence. Employees are required to call an automated line to notify the employer of their absence. Claimant was aware of this policy.

Claimant was absent from work on May 11, 2023. Claimant notified the employer prior to his shift that he was going to be absent due to being ill as a result of a kidney infection. (Exhibit N). On May 30, 2023, claimant received a final written warning for his attendance. (Exhibit J). Claimant was put on notice that any further infractions could result in continued discipline and/or termination. (Exhibit J). Claimant was aware of this warning.

Claimant was absent August 9, 2023, and August 10, 2023, due to his ankle being swollen after he sustained an injury on the property of the employer. Claimant notified the employer prior to both of his shifts. (Exhibit G).

Claimant was tardy for work on September 21, 2023. Claimant did not notify the employer he would be late. Claimant was running behind for the day. On September 25, 2023, claimant came to work and became ill. Claimant asked his supervisor to leave early. Claimant's supervisor approved claimant leaving early. Claimant clocked out at 7:59 p.m. On September 26, 2023, claimant notified the employer prior to his shift that he would be absent due to being ill.

The employer discharged claimant on October 25, 2023, due to excessive absenteeism. (Exhibit A-7).

Claimant filed for benefits with an effective date of October 22, 2023. Claimant's weekly benefit amount is \$582.00. (DBRO). Claimant began receiving benefits November 19, 2023, and received them through December 2, 2023. (DBRO). Claimant received three weeks of benefits worth a gross total of \$1,746.00. (DBRO).

The employer did not participate in the phone fact-finding interview with Iowa Workforce Development. The employer provided a written statement.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a and (d) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 even 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:

(9) Excessive unexcused tardiness or absenteeism.

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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

The requirements for a finding of misconduct that disqualifies claimant from receiving benefits based on absenteeism is 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). 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.

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.

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. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

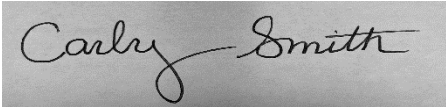
Claimant's final absences on September 25, 2023, and September 26, 2023, was due to a properly reported illness. Because claimant's final absences were related to properly reported illness, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Claimant is eligible for benefits and the employer's account is subject to charge.

The issue of whether claimant has been overpaid benefits and whether he should repay benefits is moot since claimant is eligible for benefits.

**DECISION:**

The November 15, 2023, (reference 01) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment on October 25, 2023, for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

The issue of whether claimant has been overpaid benefits and whether he should repay benefits is moot since claimant is eligible for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "Carly Smith".

---

Carly Smith  
Administrative Law Judge

March 19, 2024  
Decision Dated and Mailed

scn

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.