

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ASHLEY J HANDFORD**  
Claimant

**YELLOWBOOK INC**  
Employer

**APPEAL 18A-UI-10413-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/23/18  
Claimant: Appellant (1)**

---

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ashley Handford, Claimant, filed an appeal from the October 15, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Yellowbook, Inc. due to excessive unexcused absenteeism and tardiness. The parties were properly notified of the hearing. A telephone hearing was held on November 1, 2018 at 1:00 p.m. Claimant participated. Employer participated through Maria Gaffney, Human Resources Generalist, and Rachel Kyte, Sales Manager. Justin Linnell, Sales Director, was also present for employer. Employer's Exhibits 1 – 3 were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a telephone client services consultant from August 25, 2014 until her employment with Yellowbook, Inc. ended on September 25, 2018. (Gaffney Testimony) Claimant's direct supervisor was Rachel Kyte. (Gaffney Testimony) Claimant's schedule was Monday through Friday from 8:15 a.m. until 4:45 p.m. (Gaffney Testimony)

Per employer's policy, if employees are going to be late to or absent from work, they are to notify their direct supervisor prior to their regular shift starting time. (Gaffney Testimony) The method of notice is not specified by the policy; it is at the supervisor's discretion. (Gaffney Testimony) The policy is included in the employee handbook; claimant acknowledged receipt of a copy of the handbook. (Exhibit 1) Employer does not have a written policy regarding discipline but utilizes a progressive discipline system of written warnings prior to termination. (Gaffney Testimony)

Claimant was tardy to work on the following occasions:

- On September 25, 2018, claimant was late to work due to child care issues and did not notify employer before the start of her shift. (Claimant Testimony)

- On September 4, 2018, claimant was late to work due to transportation issues and notified employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On August 30, 2018, claimant was late to work, did not provide a reason and did not notify employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On August 20, 2018, claimant was late to work, did not provide a reason and did not notify employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On August 17, 2018, claimant was late to work due to running behind schedule and notified employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On August 8, 2018, claimant was late to work due to taking a pet to the veterinarian and notified employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On July 27, 2018, claimant was late to work due to running behind schedule and did not notify employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On July 23, 2018, claimant was late to work, did not provide a reason and did not notify employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)
- On July 13, 2018, claimant was late to work, did not provide a reason and did not notify employer before the start of her shift. (Claimant Testimony; Gaffney Testimony)

On July 27, 2018, claimant received a written warning regarding excessive absenteeism and tardiness. (Exhibit 2) Claimant received a copy of the warning. (Exhibit 2) On September 18, 2018, claimant received a written warning regarding excessive absenteeism and tardiness. (Exhibit 3) Claimant received a copy of the September 18th warning. (Claimant Testimony) Both written warnings state, "further violations can result in further disciplinary action up to and including termination." (Exhibit 2 & 3) Claimant knew that her job was in jeopardy. (Claimant Testimony) On September 25, 2018, claimant was discharged for excessive tardiness. (Gaffney Testimony)

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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 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.

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 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.

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*, 321 N.W.2d at 9; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). 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, 191 (Iowa 1984).

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*, 350 N.W.2d at 192. Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10.

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929\*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep’t of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

All nine of claimant’s absences outlined above are unexcused, because they were not for reasonable grounds, not properly reported or both unreasonable and unreported. Nine unexcused absences in less than three months are excessive. Claimant accrued six of those unexcused absences after receiving her first written warning that stated further violations may result in disciplinary action up to and including termination. Claimant was put on notice that her job was in jeopardy. Claimant’s absenteeism was excessive and constitutes disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The October 15, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, IA 50319-0209  
Fax: 515-478-3528

---

Decision Dated and Mailed

acw/rvs