

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

DEBORAH J ROBINSON
Claimant

APPEAL 24A-UI-01434-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BAPTIST HOMES OF THE MID
Employer

**OC: 12/31/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Deborah Robinson, filed an appeal from a decision of a representative dated January 24, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on February 27, 2024. The claimant participated personally. The employer, American Baptist Homes of the Midwest, participated through Human Resources Manager Sonjia Smith and Administrator Timothy Nauslar. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant was discharged for disqualifying, job-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked as a full-time infection-control and staff development nurse for American Baptist Homes of the Midwest from September 18, 2023 to November 27, 2023, when she resigned in lieu of termination. As an infection-control and staff development nurse, the claimant was responsible for testing and treating residents for infections, monitoring virus trends, and coordinating and training staff.

The employer has an employee manual containing an attendance policy. Pursuant to the attendance policy, if an employee is sick and unable to work, the employee is required to call and inform their supervisor of their absence prior to the start of their shift. The claimant received a copy of the employee manual and was familiar with the attendance policy.

On October 23, 2023, the claimant tested positive for Covid while she was at work. The employer sent the claimant home and required her to stay home and quarantine for the rest of the week. The claimant returned to work on October 30, 2024. That day, the administrator called the claimant into a meeting, where he told her that her Covid absences did not count against her, but that she needed to, "Watch it."

On November 6, 2023, while the claimant was at work, she began to look and feel so ill that the director of nursing asked the claimant if she needed to be driven to the emergency room. The claimant declined the director's offer, but the director sent the claimant home for the rest of the

day. The claimant called out sick on November 7, 2023, and on November 8, 2023, the claimant tested positive for Covid a second time. The claimant was out sick with Covid for the rest of the week and she returned to work on November 13, 2023. That same day, the administrator called the claimant into a meeting, where he told her that she was “on thin ice” and that she “could not afford another call off.”

On or around November 16, 2023, the claimant had a meeting with her coworkers and supervisors, wherein the employees were discussing their plans for the Thanksgiving holiday. During the meeting, the claimant’s supervisor commented that employees get the Friday after Thanksgiving off, but that employees are required to use PTO if they want to get paid for the day. The claimant understood this to mean that she had Friday, November 24, 2024, off, and that she only needed to use PTO if she wanted to be paid. The claimant did not put in a PTO request and she did not come to work on Friday, November 24.

On November 27, 2023, the administrator called the claimant into a meeting wherein he stated, “Thanksgiving was a holiday, Friday was not, you can either resign or be terminated.” The claimant chose to resign her employment effective immediately. Prior to claimant’s separation from employment, claimant had never received any formal warnings or workplace discipline and she was not aware that her employment was in jeopardy.

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. Benefits are allowed.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5(1). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). However, if a claimant is compelled to resign when given the choice of resigning or being discharged, the separation is not considered a voluntary leaving. See Iowa Admin. Code r. 871-24-26(21). In this case, because the claimant was compelled to resign in lieu of termination of her employment, the claimant did not voluntarily quit and her separation from employment must be analyzed as a discharge.

Iowa Code section 96.5(2)a provides:

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.

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 Dept 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that the term "excessive" is more than one. Three incidents of tardiness or absenteeism after a warning has been held to be misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of "excessive" based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

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 Dept 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 Dept 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 Dept of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 Dept 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 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, supra*. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report timely to work without notification to the employer is generally considered unexcused. However, one unexcused absence or late arrival is not disqualifying since it does not meet the excessiveness standard.

In this case, the employer has not established that the claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. The record is absent of any evidence that, prior to November 24, 2023, the claimant failed to notify the employer of her absences as required by the employer’s attendance policy. As the claimant’s absence during the weeks of October 23, 2023 and November 6, 2023, were properly reported and were due to illness, those absences are excused for the purpose of the Iowa Employment Security Act. Moreover, while the claimant was absent from work without notifying her supervisor on Friday, November 24, 2023, a single unexcused absence is not disqualifying since it does not meet the excessiveness standard. As such, the employer has not met the burden of proof to establish that the claimant was discharged for disqualifying job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 24, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on November 27, 2023, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.



Patrick B. Thomas
Administrative Law Judge

March 5, 2024
Decision Dated and Mailed

pbt/rvs

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**

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**

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.