

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

ANGELIQUE H DAWSON
Claimant

APPEAL 24A-UI-04639-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARZETTI MANUFACTURING COMPANY
Employer

**OC: 03/31/24
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Angelique H. Dawson, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) May 6, 2024 (reference 03) unemployment insurance (UI) decision. IWD denied Ms. Dawson REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on March 17, 2024 for violating a known company rule. On May 16, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Dawson and the employer for a telephone hearing scheduled for May 31, 2024.

The administrative law judge held a telephone hearing on May 31, 2024. Ms. Dawson participated in the hearing personally through a Kinyarwanda interpreter from CTS Language Link. The employer participated in the hearing through Chad Van Hauen, human resources manager. The administrative law judge admitted Department's Exhibit 1, Claimant's Exhibits A-B, and Employer's Exhibit 1 as evidence.

The administrative law judge concludes Ms. Dawson is not eligible for UI benefits because the employer discharged her from employment for disqualifying, job-related misconduct.

ISSUE:

Did the employer discharge Ms. Dawson from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Dawson began working for the employer in July 2022. She worked as a full-time sanitation worker. Her employment ended on March 29, 2024.

The employer's policy provides that an employee accrues 2 points for each day the employee does not attend work and does not call in, and 1 point for each unexcused absence. The policy

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

further provides that the employer will consider an employee to have abandoned their job and quit if the employee does not attend work or call in for three consecutive shifts, and the employer will terminate the employment of any employee who accrues 8 attendance points within 12 months. Ms. Dawson acknowledged receiving a copy of the policy on, or about, her hire date.

As of March 1, 2024, Ms. Dawson had 6 attendance points. Ms. Dawson took paid-time-off (PTO) Tuesday, March 19 through Friday, March 22. Ms. Dawson took PTO so she could serve a jail sentence after she had been convicted of a criminal offense. Ms. Dawson thought her jail sentence was one week, but when she arrived to serve her time, she learned her sentence was two weeks.

On Thursday, March 21, Ms. Dawson's husband emailed the employer and requested PTO for Ms. Dawson since she would be incarcerated past March 22. The employer denied Ms. Dawson's request on March 22. On Monday, March 25, Ms. Dawson's husband emailed the employer that Ms. Dawson was still incarcerated, and she would be released on Friday, March 29. The same day, the employer approved Ms. Dawson for PTO for Monday, March 25 and Tuesday, March 26.

Ms. Dawson did not attend work and did not call in on Wednesday, March 27, Thursday, March 28, or Friday, March 29 because she was still incarcerated. The employer considered Ms. Dawson a No-Call/No-Show all three days because Ms. Dawson did not contact the employer personally on those days. The employer assessed Ms. Dawson 2 points each day for March 27, 28 and 29. This put Ms. Dawson at 12 points. On March 29, the employer terminated Ms. Dawson's employment for accruing too many points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Dawson from employment on March 29, 2024 for disqualifying, job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

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 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. 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) and (8) provide:

(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.

(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 purpose of subrule eight is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises.

Excessive absenteeism is not considered misconduct unless the absences are also unexcused. 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. The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive.² The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings.³ Second, the absences must be unexcused.⁴ The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” or because it was not “properly reported.”⁵

An employer’s no-fault absenteeism policy or point system does not, on its own, decide the issue of qualification for UI benefits. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not voluntary. This is true 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.⁶ Medical documentation is not essential to a determination that an absence due to illness should be treated as excused.⁷ Absences related to other issues such as transportation, lack of childcare, and oversleeping are not considered excused.⁸ When a claimant does not provide an excuse for an absence the absences is deemed unexcused.⁹

The employer has the burden of proof in establishing disqualifying job misconduct.¹⁰ The issue is not whether the employer made a correct decision in separating the claimant from

² *Sallis v. Emp’t Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989).

³ *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984).

⁴ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982).

⁵ *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d at 10.

⁶ 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).

⁷ See *Gaborit*, 734 N.W.2d at 555-558.

⁸ *Higgins*, 350 N.W.2d at 191.

⁹ *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

¹⁰ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

employment, but whether the claimant is entitled to unemployment insurance benefits.¹¹ Misconduct must be “substantial” to warrant a denial of job insurance benefits.¹²

In this case, Ms. Dawson was absent March 27, 28 and 29 because she was incarcerated. Ms. Dawson, through her husband, told the employer that she would be absent these days and the reason for her absences. Ms. Dawson properly reported these three absences, so she was not a No-Call/No-Show on these three days. But absences due to incarceration based on a criminal conviction are unexcused. Even if the employer had assessed Ms. Dawson one point for each of these three days for an unexcused absence, she still would have accrued more than 8 points. The employer has established disqualifying, job-related misconduct on the part of Ms. Dawson. So, Ms. Dawson is not eligible for UI benefits.

DECISION:

The May 6, 2024 (reference 03) UI decision is AFFIRMED. The employer discharged Ms. Dawson from employment on March 29, 2024 for disqualifying, job-related misconduct. Ms. Dawson is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

June 4, 2024
Decision Dated and Mailed

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¹¹ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

¹² *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 IA 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 IA 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.