

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALEXIS VEATCH**  
Claimant

**WALMART INC**  
Employer

**APPEAL 21A-UI-09311-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/17/21  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview  
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the March 17, 2021 (reference 01) unemployment insurance decision that found the claimant was eligible for unemployment insurance benefits following her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 17, 2021. The claimant participated personally. The employer participated through witnesses Robert Wright and Julie Liechty. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Was the claimant overpaid benefits?

Is the claimant required to repay benefits or is the employer's account chargeable due to participation in the fact-finding interview?

Was the claimant overpaid FPUC benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a personal shopper. Her employment began on March 28, 2020 and ended on January 1, 2021, when she was discharged from work. She was discharged for absenteeism. Claimant first worked full-time while at the Ottumwa, Iowa store and then transferred to part-time at the Fairfield, Iowa store. Mr. Wright was her supervisor at the time she was discharged from employment.

The employer has a written attendance policy which provides that unexcused absences lead to termination from employment. See Exhibit 1. Claimant was aware of the policy. Claimant's father-in-law passed away on December 14, 2020. Claimant took approved bereavement leave on December 14, 2020; December 16, 2020; and December 18, 2020. Claimant lost her

glasses on December 17, 2020 and notified the employer that she could not drive to work without them. When she spoke to Ms. Liechty on December 17, 2020, she was told that she would be taken off the schedule until she notified the employer that she was able to and available for work.

On January 1, 2021, Ms. Liechty telephoned the claimant and discharged her for violation of the attendance policy. Claimant notified Ms. Liechty that she was scheduled to have glasses by January 3, 2021 and would be able to and available for work by that time and that she believed she was on a leave of absence and taken off the schedule until she was able to get glasses. Claimant had made approximately eight telephone calls to Ms. Liechty informing her of the status of her continued need for her being off of work. She was never informed by Ms. Liechty that she was still being scheduled to work and needed to request a leave of absence through the employer's third party vendor.

Claimant's administrative records indicate that she received regular unemployment insurance benefits in the amount of \$428.00 for two weeks ending January 30, 2021. Claimant also received FPUC benefits for two weeks ending January 30, 2021 in the amount of \$600.00. The employer was not notified regarding a fact-finding interview as no notification of interview was mailed to the employer.

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

For the reasons that follow, the administrative law judge concludes as follows:

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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment.” *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. Excessive absences are not considered misconduct unless unexcused. *Id.* at 10. 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. *Gaborit v. Emp't Appeal Bd.*, 743 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. *Id.* at 558.

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 Dep't 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*, 350 N.W.2d at 192 (Iowa 1984).

Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10 (Iowa 1982). 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.” *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

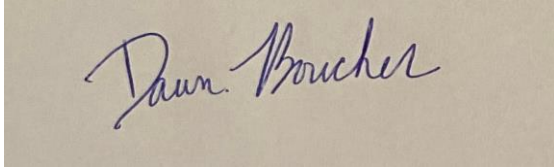
The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness and an incident of tardiness is a limited absence. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer’s interest is not shown and this is essential to a finding of misconduct. *Id.*

Excessive absenteeism has been found when there have 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). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer’s attendance policies, which determines whether absences are excused or unexcused. *Gaborit*, 743 N.W.2d at 557-58 (Iowa Ct. App. 2007).

In this case, the final incident that led to discharge was an absence from work during a time in which the claimant was told she was not being scheduled to work. Because the claimant was told by Ms. Liechty that she was not being scheduled for additional shifts after December 17, 2020 until she was able to and available for work, the employer has failed to establish that the claimant engaged in any incident of a deliberate act or omission which constituted a material breach of the duties and obligations arising out of her contract of employment. If anything, the situation was a misunderstanding between the parties that the claimant was on an approved leave of absence from work. Without a prior warning, discipline, or at the very least a notification that the claimant’s conduct was not acceptable by the employer, the employer has failed to establish that the claimant acted with carelessness or negligence of such a degree of recurrence as to manifest culpability, wrongful intent, or any intentional or substantial disregard of the employer’s interests or policies. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment of benefits are moot. The employer’s account may be charged for regular unemployment insurance benefits paid.

**DECISION:**

The March 17, 2021 (reference 01) unemployment insurance decision denying benefits is affirmed. Claimant was discharged from employment for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.



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Dawn Boucher  
Administrative Law Judge

June 30, 2021  
Decision Dated and Mailed

db/mh