

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

YONORKAI T ALANAA
Claimant

APPEAL NO. 24A-UI-04499-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

OC: 03/31/24
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On May 9, 2024, the employer filed a timely appeal from the April 29, 2024 (reference 03) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on September 15, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on May 23, 2024. Yonorkai Alanaa (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Abraham Daniels represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Yonorkai Alanaa (claimant) was employed by SDH Services West, L.L.C. (Sedexo) as a full-time Environmental Service Attendant from August 14, 2023 until September 15, 2023, when the employer discharged her from the employment. Ms. Alanaa performed her work duties at the John Deere Works in Ankeny. Ms. Alanaa was assigned to clean offices, restrooms and other areas of the facility. Ms. Alanaa's work hours were 3:00 p.m. to 11:30 p.m., Monday through

Friday. Abraham Daniels, Facilities Manager, was Ms. Alanaa's primary supervisor. Mr. Daniels' workday ended at 7:30 p.m. Between that time and the end of Ms. Alanaa's shift, Supervisor Juan Henriquez would supervise Ms. Alanaa's work. Ms. Alanaa's boyfriend also worked for the employer during the period of Ms. Alanaa's employment.

On the last day of the employment, between 4:15 and 4:30 p.m., Mr. Abraham and Sasha Kisgen, General Manager, located Ms. Alanaa sitting idle in her boyfriend's work area. Ms. Alanaa was on the clock and was at that time supposed to be performing her assigned duties in her assigned work area. Mr. Abraham and Ms. Kisgen had Ms. Alanaa accompany them to an office for a meeting. Ms. Alanaa told the employer she had been waiting for her boyfriend to finish working in his area so that he could accompany her to her work area. Ms. Alanaa and her boyfriend were not assigned to work together. The employer told Ms. Alanaa that the employer would make a determination regarding whether to continue Ms. Alanaa in the employment.

Prior to discharging Ms. Alanaa from the employment, the employer learned that Ms. Alanaa had twice left early without notice to the employer and without clocking out. On August 29, 2023, Ms. Alanaa left work at 9:54 p.m. Ms. Alanaa's boyfriend transported Ms. Alanaa home. Ms. Alanaa's boyfriend clocked Ms. Alanaa out at 11:31 p.m., to make it look like Ms. Alanaa had been at work throughout the shift. Ms. Alanaa and her boyfriend repeated the behavior on September 5, 2023. On that day, Ms. Alanaa left at 7:45 p.m. without notice to the employer and without clocking out. Ms. Alanaa's boyfriend transported Ms. Alanaa home and clocked Ms. Alanaa out at 11:30 p.m., to make it look like Ms. Alanaa had been at work throughout the shift. The employer confirmed the early departures by contacting facility security personnel. The employer interviewed Ms. Alanaa's boyfriend, who admitted that he had transported Ms. Alanaa home prior to the end of her shift and had clocked her out at the end of the shift. Supervisor Juan Henriquez confirmed he had not seen Ms. Alanaa at the end of the shift on the days in question. The employer had paid Ms. Alanaa for the full-shift, pursuant to the false time reports.

At the start of the employment, the employer told Ms. Alanaa that she was required to notify a supervisor if she needed to leave work early. The employer had Ms. Alanaa sign to acknowledge receipt of the attendance policy and online access to the employee handbook.

Ms. Yonorkai established an original claim for benefits that was effective March 31, 2024. SDH/Sedexo is a base period employer. IWD approved benefits totaling \$1,419.00 for the three weeks between March 31, 2024 and April 20, 2024. IWD offset \$819.00 of the benefits against a prior overpayment and disbursed the remaining \$600.00 to Ms. Yonorkai.

On April 26, 2024, IWD Benefits Bureau held a fact-finding interview that was to address the claimant's discharge from the claimant. Neither party participated in the fact-finding interview. The claimant answered the IWD's deputy's call, but then left the call without providing a statement. When the deputy called the Equifax number provided in the SIDES protest, the Equifax representative declined to participate. That left only the SIDES protest information for the deputy's consideration. The SIDES protest included dates of employment, the claimant's job title, a generic indication that the claimant had been discharged for failure to follow instructions, policy and/or contract, and the generic narrative that the claimant was discharged for violation for a reasonable and known policy. The SIDES protest indicated that further details were not available. The employer's sole witness for the appeal hearing, Mr. Daniels, was not involved in matters pertaining to the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 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:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(9) Excessive unexcused tardiness or absenteeism.

...

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 87124.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence in the record establishes a September 15, 2023 discharge for misconduct in connection with the employment. On August 29 and September 5, 2023, the claimant conspired with her boyfriend/coworker to create false time reports indicating the claimant had worked her entire shift. In both instances, the claimant left work early without notice to the employer and without clocking out. The claimant's conduct led to the claimant being paid unearned wages. In both instances, the claimant knowingly and intentionally violated the employer's time reporting policy. The claimant further engaged in time theft and further indicated willful and wanton disregard of the employer's interests on the last day of the employment, when she knowingly and intentionally loitered outside her work area at a time when she was on the clock and was supposed to be performing her work duties. In addition to the dishonest time reporting and time theft, the claimant's conduct included excessive unexcused absences through the early departures on August 29 and September 5, 2023. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides in relevant part as follows:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)

(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory

and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Administrative Code rule 87124.10(1) and (4), regarding employer participation in fact-finding interviews, provides as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

...


(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

The claimant was overpaid \$1,419.00 in benefits for three weeks between March 31, 2024 and April 20, 2024. The claimant received \$1,419.00 in benefits for those three weeks through an \$819.00 offset against a prior overpayment and through disbursement of \$600.00. This decision disqualifies the claimant for those benefits. The employer did not participate in the fact-finding interview. The employer's representative declined to participate in the fact-finding interview. The employer presented no evidence to establish insufficient notice of the fact-finding interview. The SIDES protest provided minimal information, far less than needed to satisfy the

participation requirement. The claimant did not provide a statement at the fact-finding interview and thus did not provide any intentionally misleading statement in connection with the fact-finding interview. For these reasons, the claimant is not required to repay the \$1,419.00 overpayment for the three weeks between March 31, 2024 and April 20, 2024. The employer's account may be assessed in connection with the benefits credited to the claimant for the three weeks between March 31, 2024 and April 20, 2024. The employer's account is relieved of charges for the period beginning April 21, 2024.

DECISION:

The April 29, 2024 (reference 03) decision is REVERSED. The claimant was discharged on September 15, 2024 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,419.00 in benefits for the three weeks between March 31, 2024 and April 20, 2024. The claimant is not required to repay the \$1,419.00 overpayment based on benefits credited for the three weeks between March 31, 2024 and April 20, 2024. The employer's account may be assessed in connection with the benefits credited to the claimant for the three weeks between March 31, 2024 and April 20, 2024. The employer's account is relieved of charges for the period beginning April 21, 2024.



James E. Timberland
Administrative Law Judge

May 24, 2024
Decision Dated and Mailed

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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:

**Employment Appeal Board
6200 Park Ave 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>.

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:

**Employment Appeal Board
6200 Park Ave 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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.