

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUSTIN L BIRKENHOLTZ
Claimant

PELLA CORPORATION
Employer

APPEAL 21A-UI-20220-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/25/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On September 13, 2021, employer Pella Corporation filed an appeal from the September 2, 2021 (reference 01) unemployment insurance decision that allowed benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Wednesday, November 3, 2021. The claimant, Dustin L. Birkenholtz, did not register a telephone number and did not participate in the hearing. The employer, Pella Corporation, participated through Amber Kelley, Human Resources Representative. Employer's Exhibits 1 through 7 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment due to disqualifying, job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an operator 3, from July 13, 2015, until July 20, 2021, when he was discharged for excessive absenteeism.

Claimant last reported to work on June 11, 2021. Claimant stopped reporting to work after that date, due to both his own personal illness and the underlying health conditions of his parents, with whom he resided. Kelley explained that claimant wanted to remain away from work to protect his parents, who were "high risk."

Claimant called and reported to his manager each day that he would not be at work. His manager informed him that he needed to provide the employer with medical documentation excusing him from work, as his absences were mounting and were unexcused without supporting documents from a medical provider. Claimant did not submit this documentation.

Human Resources also reached out to claimant to let him know that he needed to provide documentation from a medical provider in order to excuse his absences and retain his employment.

At some point in late June, claimant stopped communicating with the employer's Human Resources department. As a result, the employer began communicating with the claimant via letter through the U.S. mail. On July 1, HR representative Loren Van Zanten sent claimant a letter notifying him that he had multiple options to excuse his absences and protect his employment. (Employer's Exhibit 5, page 1) Those options included FMLA-protected leave; short-term disability benefits; and a reasonable accommodation. This letter also makes clear that the employer will treat all absences as "unexcused and will result in increased incidents, higher percentage, and additional corrective action unless approved for an accrued leave." (Employer's Exhibit 5, page 1) On July 12, the employer mailed claimant a Class Three Corrective Action Letter regarding his absenteeism. (Employer's Exhibit 6, page 1) This document outlines the prior discipline claimant had received for absenteeism and clearly states, "[Y]our job is in jeopardy."

On July 19, 2021, the employer mailed claimant a letter terminating his employment. (Employer's Exhibit 2, page 1) This letter reiterates that claimant has been warned through both written letters and phone calls regarding his absenteeism, and it outlines the dates of his three prior written warnings. It also reminds claimant that he was presented the opportunity to pursue FMLA-protected leave, short-term disability benefits, and a reasonable accommodation, and he did not pursue any of those options.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of July 25, 2021. The administrative record also establishes that the employer did participate in the fact-finding interview by providing written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for excessive, unexcused absenteeism.

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(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.

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*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 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. *Gaborit*, supra. 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* 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. However, an employer is entitled to expect its employees to report to work as scheduled. Here, claimant was absent for an extended period of time. He failed to comply with the employer's requests to pursue any protection for his job through an accommodation, medical documentation supporting his absence, or a protected form of leave. The employer's expectation that he comply with this request was reasonable; it cannot accommodate an indefinite leave without any supporting documentation substantiating the need for the leave. Benefits are withheld.

As claimant has not received any benefits since separating from employment, the issues of overpayment, repayment, and chargeability are moot at this time.

DECISION:

The September 2, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 7, 2021
Decision Dated and Mailed

lj/scn