

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**THELMA BRIDGES**  
Claimant

**TARGET CORPORATION**  
Employer

**APPEAL 21A-UI-03701-SC-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/20  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 25, 2021, (reference 03) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2021. Claimant participated and testified. The employer did not participate. No exhibits were admitted into the record. The administrative law judge took official notice of the agency records.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

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

The claimant was employed part-time as a warehouse associate from April 30, 2020, until she was separated from employment on June 26, 2020, when she was discharged. The claimant could not remember who her direct supervisor was. The claimant worked Monday, Tuesday, Thursday and Friday from 2:00 p.m. to whenever they are finished. The claimant was off on Wednesdays, Saturdays and Sundays.

The employer has a number for reporting when an employee is absent. The employee gives a reason for why they are going to be absent. The claimant believed an employee received a warning after accruing three tardy incidents. She was not sure how other discipline would be given under the policy. The claimant is aware of the employer's absentee policy because she received an employee handbook.

The claimant did report to work on June 23, 2020, June 25, 2020, and June 26, 2020. The claimant stated she could not come in because she was having an asthma attack. The claimant got a call from (Title unknown) Corey (last name unknown) that same week. Corey told her she was being terminated for absences occurring earlier that week.

The claimant had not been disciplined for attendance in the past.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct.

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(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. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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 or to be notified as to when and why the employee is unable to report to work.

The claimant has significant credibility issues in this case. Initially, the claimant said she had been laid off. Then she had been terminated, but was not told the reason for her termination. At a later point in the hearing and in her appeal letter, the claimant said Corey told her she was being terminated because "a lot of people" had told him "bad reports" about her. The claimant's final explanation was that she was terminated for excessive absenteeism, despite reporting her absences. The administrative law judge believes this is the likeliest scenario of the three because it corresponds with the underlying decision's rationale. However, the administrative law judge cannot find that she quit due to absences because there is nothing in the record supporting the employer had a policy considering three consecutive absences a voluntary quit. Despite these credibility issues, the claimant described several scenarios alleging either discharge or layoff. The employer has not met its burden to show the claimant's separation was due to willful misconduct. Benefits are granted.

**DECISION:**

The January 25, 2021, reference 03, unemployment insurance decision is reversed. The claimant was discharged due to non-disqualifying conduct. Benefits are granted provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

March 30, 2021  
Decision Dated and Mailed

smn/ol