

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JALON JACKSON
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-10282-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Jalon Jackson, filed an appeal from the April 6, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged due to unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on June 25, 2021. The claimant participated. The employer did not participate. Official notice was taken of the administrative records.

ISSUE:

- Whether the claimant was separated due to willful misconduct?
- Whether the claimant was able and available for work after separating from employment?

FINDINGS OF FACT:

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

The claimant was employed full time as a freezer warehouse worker from July 2, 2018, until this employment ended on March 15, 2021, when he was discharged. The claimant's immediate supervisor was Supervisor Darina Porter.

The employer has an attendance policy. The attendance policy states an employee is to report an expected absence to the Human Resources Department at least 30 minutes prior to the onset of the employee's shift. If an employee is going to return from being on leave due to a non-work-related injury or illness, the employer requires the employee to provide a release to return to work without restriction. The claimant was aware of this policy because he received an employee handbook.

On January 31, 2021, the claimant had a car accident. This resulted in the claimant being unable to work for the next two weeks because he had to go to the emergency room and

recover from his injuries. Nevertheless, the claimant kept the employer's Human Resources Department apprised regarding his recovery and checked in every day according to its reporting procedure.

On February 17, 2021, the claimant obtained a doctor's note stating that he was released to return to work on February 18, 2021.

On February 18, 2021, the claimant attempted to return to work. The employer's Human Resources Department told the claimant that the release to return to work was insufficient because it did not state whether he had restrictions.

On February 21, 2021, the claimant had another car accident with another vehicle.

On March 2, 2021, the claimant obtained a doctor's note for the employer that explicitly stated he was released to return to work on February 18, 2021 without restrictions. The doctor added, "There is nothing medical preventing him from going back to full duty." The employer's Human Resources Department determined this note was insufficient because it did not cover days occurring prior to February 18, 2021. As a result, the employer would not allow the claimant to return to work.

On March 8, 2021, the claimant obtained a doctor's note stating he was excused from working from March 8, 2021 to March 14, 2021 due to neck and back pain resulting from the accidents.

On March 15, 2021, the claimant was terminated by Ms. Porter. Ms. Porter stated that he was being terminated for having excessive attendance points arising from his inability to return to work after the accidents that occurred on January 31, 2021 and February 21, 2021.

The claimant did not receive any formal discipline regarding attendance prior to his termination from employment.

After he was separated from employment, the claimant was able and available for work. The claimant has not been subject to restrictions or ill since March 14, 2021. He fixed the first car that was in an accident prior to his separation from the employer, so it is operable to commute to work.

On April 19, 2021, the claimant was reinstated to his position at the employer. The Human Resources Department stated that he would not receive back pay for the time he was unable to return to work or after his separation from employment. The claimant returned to his regular hours that week.

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. The administrative law judge further concludes the claimant was able and available for work.

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.

In this case, the claimant kept the employer apprised of his condition after being in two car accidents. As a result, the employer was aware that many of those absences were due to serious medical conditions resulting from those accidents. The remaining absences were due to the employer's stance regarding the perceived insufficiency of several releases he provided. None of these absences can be construed to be instances of misconduct because they were properly reported and due to either medical conditions or the resulting return from leave.

Now the administrative law judge will evaluate whether the claimant was able and available for work after separating from employment.

Iowa Code section 96.4(3) provides:

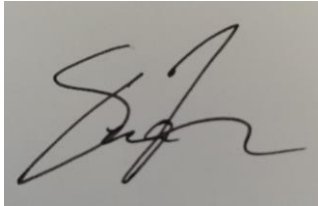
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant stated that he sought work immediately after separating from employment. He was not subject to restrictions or too ill such that he could not work the majority of any week he made weekly claimants. The administrative law judge is satisfied the claimant was able and available to work after his separation from employment. On April 19, 2021, the claimant returned to his past position and has been working his regularly occurring schedule.

DECISION:

The April 6, 2021, (reference 01) 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 'S. Nelson', is written over a light gray rectangular background.

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

July 8, 2021
Decision Dated and Mailed

smn/lj