

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUSTIN CONROY**  
Claimant

**APPEAL 21A-UI-20748-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUALITY MANUFACTURING  
CORPORATION**  
Employer

**OC: 08/01/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Justin Conroy, filed an appeal from the September 14, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged due to excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on November 9, 2021 at 10:00 a.m. The claimant participated. The employer participated through Human Resources Specialist Sara Dean and Human Resources Manager Nate Cloe. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 were received into the record.

**ISSUES:**

Whether the claimant was discharged for willful work-related misconduct?

**FINDINGS OF FACT:**

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

The claimant was employed full-time first as a labor operator and then as a paint prep from May 21, 2012, until this employment ended on August 6, 2021, when he was discharged. The claimant's immediate supervisor was Production Manager Kevin Leabhart.

The employer has an attendance policy contained in its employee handbook. The attendance policy states that an employee is subject to discipline once they have three or more attendance instances in a six-month period. The claimant acknowledged receiving the employee handbook.

The claimant has been diagnosed with Grave's disease. The claimant provided a document confirming he had Grave's disease. Around that same time, the claimant requested a reasonable accommodation to use the restroom more often because of this condition. The claimant maintains it disrupts his sleep, but he did not request a reasonable accommodation to address this symptom.

Prior to January 1, 2021, the claimant was tardy approximately 30 to 40 times in his laser operator role.

In February 2021, the claimant's wife separated from him. This resulted in him having to find childcare arrangements for his five children.

In February 2021, the claimant was moved to a paint prep role. The claimant was suspended for performance in his laser operator role. At that time, the claimant was offered two positions as an alternative to the laser operator role. The claimant decided to take the paint prep position. Previously, his schedule was from 7:00 a.m. to 3:30 p.m. Monday through Friday and occasionally flex hours on the weekends if needed. After taking the paint prep position, the claimant's schedule changed to 5:00 a.m. to 3:30 p.m. Monday through Friday. The claimant was apprehensive about taking this schedule because finding a babysitter at 5:00 a.m. is difficult to do.

On April 7, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 9, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 13, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 19, 2021, the claimant was absent for a whole day. The claimant called in prior to the start of his shift to inform the employer he would not be in that day due to inadequate childcare.

On April 22, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 23, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 27, 2021, the claimant was absent for a whole day. The claimant called in prior to the start of his shift to inform the employer he would not be in that day because his Grave's disease was flaring up.

On April 28, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On April 30, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On May 7, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On May 11, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On May 12, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On May 12, 2021, the claimant received a written warning from Mr. Leabhart. The written warning stated that future occurrences of attendance could lead to further discipline up to and including termination.

On May 21, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On June 7, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On June 16, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On June 25, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On June 30, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 1, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 9, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 13, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 15, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 16, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 23, 2021, the claimant was absent for the whole day. The claimant called in prior to the start of his shift to inform the employer he would not be working on that day due to his own illness.

On July 27, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 28, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 29, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On July 30, 2021, the claimant was late for work. Neither party was able to provide specifics for the duration of the tardiness.

On August 4, 2021, the claimant was absent for the whole day. The claimant called in prior to the start of his shift to inform the employer he would not be working on that day due to his own illness.

On August 6, 2021, the claimant arrived to work an hour late. The claimant called prior to the start of his shift to say that he would be late due to babysitting issues. That same day, Mr. Leabhart made the decision to terminate the claimant for excessive absenteeism. The claimant attempted to justify his absences by stating that he had difficulty finding childcare prior to the start of his shift. He did not give the rationale that his Grave's disease caused him to oversleep.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

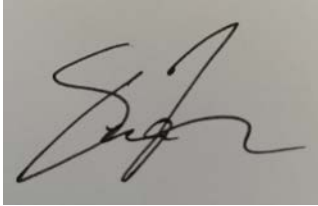
The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited 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 employer has established that the claimant was warned that further improperly reported unexcused absences could result in termination of employment and the final absence was not properly reported excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive.

The administrative law judge is sympathetic to the claimant's circumstances regarding childcare and the extent to which his Grave's disease impacts his ability to work. However, as stated above oversleeping and inadequate childcare are generally not reasonable grounds, especially given the duration that this pattern of absenteeism last. Benefits are withheld.

**DECISION:**

The September 14, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
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December 27, 2021  
Decision Dated and Mailed

smn/scn