

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

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**BEN T EATON**  
Claimant

**APPEAL NO. 24A-UI-01770-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAFF MANAGEMENT SOLUTIONS LLC**  
Employer

**OC: 01/21/24**  
**Claimant: Appellant (1)**

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Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On February 14, 2024, Ben Eaton (claimant) filed a timely appeal from the February 9, 2024 (reference 01) decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on January 2, 2024 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on March 6, 2024. Claimant participated. Martin Cano represented the employer. Exhibit A, the claimant's online appeal was not received into evidence because it was duplicative of the claimant's sworn testimony. Exhibit 1, the employer's proposed exhibit packet, was not received into evidence because it was not served on the claimant.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

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

Ben Eaton (claimant) was employed by Staff Management Solutions, L.L.C. in a full-time, temporary work assignment at Oral B in Iowa City. The claimant began the assignment in July 2023. The claimant was assigned to the third shift. The claimant's work hours on the third shift were 11:00 p.m. to 7:15 a.m., Sunday evening through Friday morning. Martin Cano, First and Third Shift Manager, was the claimant's supervisor. Mr. Cano is a Staff Management Solutions employee assigned to the Oral B facility. The claimant last performed work for the employer on a shift that started on the evening of December 27, 2023 and that ended on the morning of December 28, 2023. The claimant completed that shift.

The claimant was next scheduled to work on the evening of Thursday, December 28, 2023. The claimant did not report for the shift and did not notify the employer he would be absent from the shift. The employer had not approved the claimant to be absent from the shift. The claimant elected to travel to Chicago to visit family.

On December 22, 2023, the employer issued a final warning to the claimant for attendance. At that time, the employer told that claimant that if he missed additional days, he would be suspended or discharged from the employment. In addition, the employer reminded the claimant that he was required to give notice of the need to be absent two hours prior to the start of the shift. The employer had initially reviewed the attendance policy and the absence reporting requirement with the claimant at the start of the employment.

After the claimant missed the December 28, 2023 shift, the claimant was next scheduled to report for work on the evening of Monday, January 1, 2024. The claimant did not report for the shift and did not give notice of a need to be absent.

The claimant was next scheduled to report for work on the evening of January 2, 2024. Prior to the scheduled start of the shift, the employer made the decision to discharge the claimant from the employment. The employer attempted to notify the claimant by telephone but used an old telephone number. When the claimant attempted to report for work on the evening of January 2, 2024, security personnel did not allow the claimant to enter the workplace. The claimant thereafter attempted to contact the employer. The employer subsequently notified the claimant that he was discharged from the assignment and the employment.

On September 25, 2023, the employer had issued a written reprimand to the claimant for attendance. After that reprimand, the claimant was a no-call/no-show for shifts on December 14 and 19, 2023. On December 21, 2023, the claimant overslept and then provided late notice to the employer that he would be absent from his shift. The December 21, 2023 absence triggered the December 22, 2023 final warning regarding attendance.

#### **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.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating 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 871 IAC 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 Iowa Administrative Code rule 87124.32(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 weight of the evidence in the record establishes a January 2, 2024 discharge for misconduct in connection with the employment. The evidence establishes a written warning for attendance in September 2023 that was followed by no-call/no-show absences on December 14, December 19, December 28, and January 1. Each of the no-call/no-show absences was an unexcused absence under the applicable law. The weight of the evidence does not support the claimant's assertion that he made, and the employer approved, a December 22, 2023 request for December 28, 2023 off. The conversation the claimant refers to is the conversation during which the employer issued the final warning for attendance and warned the claimant that if he missed additional shifts, he would be suspended or discharged from the employment. The weight of the evidence also does not support the claimant's assertion that his shift was not scheduled to work on the evening of January 1, 2024. The employer had provided a three-day break from work on December 29, 30 and 31, 2023 in

connection with the New Year's holiday. A reasonable person would conclude that Mr. Cano, as shift manager, would know when the third shift was scheduled to return to work. The evidence establishes no reason for the employer to misstate that information. The claimant's no-call/no-show absences on December 28 and January 1 were part of an earlier established pattern of unexcused absences. The evidence establishes an additional unexcused absence on December 21, 2023, when the claimant overslept and provided late notice of his need to be absent. The claimant's unexcused absences were excessive. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The February 9, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on January 2, 2024 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

March 14, 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  
Online: 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.