

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

MARIE G NICHOLSON
Claimant

APPEAL NO. 25A-UI-03185-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC
Employer

**OC: 02/02/25
Claimant: Respondent (4)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.5(12) – Discharge from Part-time, Supplemental Employment.

STATEMENT OF THE CASE:

On April 25, 2025, the employer filed a timely appeal from the April 16, 2025 (reference 06) decision that allowed benefits, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 2, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on May 12, 2025. Marie Nicholson (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Amira Olson represented the employer. Exhibits 1 through 10 were received into evidence. The administrative law judge took official notice of IWD's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the February 2, 2025 original claim.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the part-time supplemental employment.

FINDINGS OF FACT:

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

Marie Nicholson (claimant) was employed by Grapetree Medical Staffing, Inc. as a part-time certified nursing assistant (CNA) from June 2024 until December 2, 2024, when the employer discharged her from the employment for attendance. The employer is a staffing agency. This employment was a part-time, supplemental employment for Ms. Nicholson. The employer was aware that Ms. Nicholson had other employment but left it to Ms. Nicholson to coordinate her own schedule. Ms. Nicholson has at all relevant times resided in Burlington. Most, if not all of the temporary work assignments, required a substantial commute to the client facility.

If Ms. Nicholson needed to be absent from work, the employer's policy required that Ms. Nicholson give 72-hours (3 days') notice to the employer.

The final absence that triggered the discharge occurred on December 1, 2024, when Ms. Nicholson was absent due to illness. Ms. Nicholson had accepted the assignment on November 19, 2024. On December 1, Ms. Nicholson was scheduled to work at a facility in Bettendorf from 6:00 a.m. to 2:15 p.m. At 4:58 a.m., Ms. Nicholson notified the employer that she was having a panic attack and was heading to the emergency room. The notice came after the time when Ms. Nicholson would have needed to leave home to get the shift.

The employer considered several earlier absences when making the decision to discharge Ms. Nicholson from the employment.

On September 29, 2024, Ms. Nicholson was supposed to work a 5:00 a.m. to 2:00 p.m. shift at Oakview in Burlington. She accepted the assignment on September 27. At about 4:00 a.m., Ms. Nicholson notified Oakview that she could not appear for the shift. At 4:05 a.m., Oakview notified Grapetree Medical Staffing. Ms. Nicholson did not notify Grapetree of her need to be absent from the shift..

On October 20, 2024, Ms. Nicholson was supposed to work at 5:00 a.m. to 2:30 p.m. shift at Colonial Manor. She accepted the assignment on October 18. At 4:00 a.m. on October 20, Ms. Nicholson notified the employer she could not report for the shift because she was working her other job.

On October 25, 2024, Ms. Nicholson was supposed to work a 10:00 p.m. to 5:00 a.m. overnight shift at Parkview Homes in Wayland, Iowa. Ms. Nicholson accepted the shift at 9:28 a.m. on October 25. Ms. Nicholson was absent from the shift without notifying the employer. At 1:28 p.m., Ms. Nicholson notified the employer that she had missed the shift because she had been at the emergency room with her child and then had fallen asleep when she got home.

On November 3, 2024, Ms. Nicholson was supposed to work a 9:00 p.m. to 6:30 a.m. overnight shift at Colonial Manor. Ms. Nicholson accepted the assignment on October 29, 2024. At 8:09 p.m., Ms. Nicholson notified the employer she could not appear for the shift because she was working at her main job.

On November 2, 2024, Ms. Nicholson was supposed to work 1:00 p.m. to 10:00 p.m. shift at West Point Care Center. She accepted the assignment on October 29, 2024. At 12:25 p.m., Ms. Nicholson notified the employer she could not report for the shift because she could not leave her primary employment.

On November 23, 2024, Ms. Nicholson was supposed to work a 1:00 p.m. to 10:00 p.m. shift at Aspire of Washington. At 12:47 p.m., Ms. Nicholson notified the employer she could not report for the shift because she was unable to leave her primary employment.

On November 24, 2024, Ms. Nicholson was supposed to work two shifts. The first shift was 5:00 a.m. to 1:00 p.m. at Empowering Abilities #1 in Davenport. The second shift was 2:00 p.m. to 10:30 p.m. at Colonial Manner. Ms. Nicholson had accepted the afternoon assignment on November 17 and had accepted the morning assignment on November 23. The employer does not know whether or when Ms. Nicholson gave notice she would needs to be absent from either or both shifts.

On November 28, 2024, Ms. Nicholson was supposed to work two shifts at Empowering Abilities #1 in Davenport. The first shift was 6:00 a.m. to 2:00 p.m. The second shift was 2:00 to 8:00 p.m. At 5:50 a.m., Ms. Nicholson notified the employer she would be absent from both shifts due to her child running a temperature and needing to take a COVID-19 test.

On November 30, 2024, Ms. Nicholson notified the employer at 6:20 a.m. of her need to be absent from a shift in Wheatland, Iowa that was to start at 5:30 a.m. Ms. Nicholson had accepted the assignment on November 19, 2025. Ms. Nicholson had overslept.

Ms. Nicholson established a claim for benefits that was effective February 2, 2025, but has received no benefits in connection with the claim.

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.

...

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).

Allegations of misconduct or dishonesty without additional evidence are not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Admin. Code rule 871-24.24(3).

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 Iowa Admin. Code rule 871-24.24(7). 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).

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 87124.24(7). 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 evidence in the record establishes a December 2, 2024 discharge for misconduct in connection with the part-time, supplemental employment. The final absence that triggered the discharge was the absence on December 1, 2024, when the claimant was absent due to purported illness and notified the employer 62 minutes prior to the scheduled start of the shift. While the employer policy requirement of 72 hours' notice of a need to be absent was unreasonable, it would be reasonable for the employer to expect enough notice to allow the employer reasonable opportunity to attempt to find someone else to cover the shift. The notice at 4:58a.m. on December 2, 2024 was too late to allow the employer such opportunity. Ms. Nicholson unreasonably delayed giving notice until after the time she would have needed to begin her commute—and after she would have needed to make a decision about whether she was going to make the commute. Ms. Nicholson likewise failed to provide reasonable notice to the employer on September 29, October 20, October 25, November 2, November 3, November 23, for the first shift on November 24 but not the second shift on November 24, for the first shift on November 28 but not the second shift on November 28, and on November 30, 2024. Each of these absences with insufficient notice was an unexcused absence, regardless of the basis for the absence. Each negatively impacted not only the employer but also the client facility that was expecting Ms. Nicholson's help. The unexcused absences were excessive and constituted misconduct in connection with the employment.

Iowa Code section 96.5(12) provides as follows:

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Code section 96.5(12), when read in conjunction with the discharge statute to which it refers, provides for different treatment of a disqualifying discharge from part-time, supplemental employment than the full disqualification that would otherwise apply under the discharge statute.

The claimant is disqualified for benefits that are based on wages earned from this part-time, supplemental employment until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. In other words, the wages and wage credits associated with this employment will be removed from the claim until the claimant meets the 10-times weekly benefit amount requalification requirement. Because the discharge was from part-time, supplemental employment, the claimant remains eligible for benefits that are based on wages from other base period employment, provided she meets all other eligibility requirements. The employer account for Grapetree Medical Staffing, Inc. shall not be charged for benefits that are based on the June 2024 through December 2, 2024 employment.

DECISION:

The April 16, 2025 (reference 06) decision is MODIFIED in favor of the employer/appellant as follows. The claimant was discharged on December 2, 2024 for misconduct in connection with this part-time, supplemental employment. The wages from this part-time, supplemental employment shall be removed from the claim until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Because the discharge was from part-time, supplemental employment, the claimant remains eligible for benefits that are based on wages from other base period employment, provided she meets all other eligibility requirements. The employer account for Grapetree Medical Staffing, Inc. shall not be charged for benefits that are based on the wages and wage credits earned from the June 2024 through December 2, 2024 Grapetree employment.



James E. Timberland
Administrative Law Judge

May 21, 2025
Decision Dated and Mailed

JET/jkb

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.