

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

KIARA D LANDON
Claimant

PELLA CAR CARE INC
Employer

APPEAL NO. 24A-UI-08789-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/08/24
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

On October 9, 2024, the employer filed a timely appeal from the September 30, 2024 (reference 02) decision that allowed benefits to the claimant, 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 for no disqualifying reason. The reference 01 decision erroneously stated the year in the discharge date as October 27, 2024. The correct date was October 27, 2023. After due notice was issued, a hearing was held on October 24, 2024. Kiara Landon (claimant) did comply with hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Austin Crase represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the IWD administrative record of benefits disbursed to the claimant, which record reflects that no benefits have been paid in connection with the claim.

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:

Kiara Landon (claimant) was employed by Pella Car Care, Inc. as a full-time service technician from June 2023 until October 27, 2023, when Austin Crase, owner and president, discharged her from the employment for attendance. Ms. Landon's work hours were 7:30 a.m. to 5:30 p.m., Monday through Friday. Ms. Landon resided in Newton. Ms. Landon commuted to the workplace in Pella when she did not stay with her boyfriend who lived in Pella.

If Ms. Landon needed to be absent from a shift, the employer's policy required that she give notice to the employer at least an hour prior to the scheduled start of her shift. Though the employer's written attendance policy required a phone call to the employer, the employer also accepted text messages directed to a designated work phone number. Text message sent by Ms. Landon to the designated phone number would immediately become available to Mr. Crase

and the other management staff. If Ms. Landon needed to be late for work, the employer's policy required that she give notice to the employer by a phone call or text to designated number. The employer's written attendance policy is set forth in the employee handbook the employer provided to Ms. Landon in connection with the start of the employment. The policy emphasized the need to report for work on time and as scheduled. The policy also stressed the negative impact absent employees had on the employer's business operations. Ms. Landon was at all relevant times aware of the attendance policy, including the absence reporting requirement. Ms. Landon's attendance was an issue throughout the employment.

The final absence that triggered the discharge occurred on Friday, October 27, 2023, when Ms. Landon provided late notice at 8:27 a.m. that she would be absent that day and would return to work on the following Monday. Ms. Landon did not give a reason for the late notice of her need to be absent. Ms. Landon had been absent three other times during the same week. On October 23, 24 and 26, Ms. Landon provided late notice that she would be absent due to illness and did not provide a reason for the late notice. In connection with all four absences from that week, Ms. Landon did not contact the employer until after the scheduled start of her shift.

Ms. Landon was absent from work on several occasions in June 2023. The employer noted attendance issues on June 13, 15, 19, and 20, 2023, but is unable to retrieve details pertaining to those absence dates. Ms. Landon reported for work late on June 26, 2023, but the employer is unable to retrieve details pertaining to that absence.

On June 27, Ms. Landon was late in returning from her one-hour lunch break.

On June 29, Ms. Landon notified the employer at 8:10 a.m. that she would be absent late for the shift that was to start at 7:30 a.m. due to truck moving a house. Ms. Landon did not provide a reason for giving late notice, 40 minutes after the scheduled start of her shift.

Ms. Landon was absent on several occasions in July 2023.

On July 12, Ms. Landon gave late notice at 8:07 a.m. that she would be late due to traffic and rainy weather.

On Monday, July 17, Ms. Landon gave late notice that she needed to take the day off to speak with an insurer about the previous Friday.. Ms. Landon did not give a reason for the late notice. Ms. Landon did not state why she had not taken care of the contact with the insurer over the preceding weekend, why she could not contact the insurer outside of the scheduled hours of her employment, or why she could not make the call while on a break at work.

On July 19, Ms. Landon gave timely notice that she would be late due to her dog having seizures. Ms. Landon indicated that she would report for work once her mother got home. However, Ms. Landon then did not report to work at all on that day.

On July 21, Ms. Landon gave late notice at 8:33 a.m. that she would be late for her 7:30 a.m. shift and attributed the late arrival to having to drive her boyfriend's nominally road-worthy vehicle. Ms. Landon was again late on July 26, but provided not notice to the employer.

On July 31, 2023, Ms. Landon left work early due to illness and after speaking with a supervisor.

Ms. Landon was absent on several occasions in August 2023.

On August 1, Ms. Landon gave late notice at 7:46 a.m. that she would be absent due to illness.

On August 4, Ms. Landon gave late notice at 8:23 a.m. that she would be late because she stopped to put gas in her vehicle.

The employer asserts Ms. Landon was late returning from lunch on August 9 without notice that she would be late. However the employer is unable to provide the time Ms. Landon left for lunch or the time she returned from lunch.

On August 10, Ms. Landon gave late notice that she needed to be absent because her aunt suffered a stroke. Ms. Landon did not reside with the aunt. There is no indication that Ms. Landon was responsible for or involved in her aunt's care. On August 11, Ms. Landon gave late notice that she would absent so that she could assist with removing her aunt's belongings from her aunt's homes.

On August 23, Ms. Landon provided late notice at 7:14 a.m. that she would be absent that day due to heat and due to a medication that made her sensitive to heat. The employer's shop is not air conditioned. The employer is aware that the lack of air conditioning makes the shop unbearable during some summer days. The employer persuaded Ms. Landon to report for work. The employer told Ms. Landon the next day was supposed to be even hotter. Ms. Landon reported to work between 8:00 a.m. and 9:00 a.m. Ms. Landon left later in the shift due to heat-related illness and with proper notice to the employer. At that time, the employer approved an absence due to the heat on August 24, 2023.

On August 25, Ms. Landon gave late notice that she would be absent that day because she was still recovering from heat exhaustion.

On Tuesday, August 29, Ms. Landon gave late notice at 8:04 a.m. that she would be absent due to illness. Later that day, Ms. Landon sent the employer a copy of a medical note indicating she had tested positive for COVID-19 and was required to quarantine for five days, provided her symptoms improved by then. The employer responded that he would expect to see Ms. Landon's the following week, meaning that her absence for the remainder of the week was approved.

Ms. Landon was absent on several occasions in September 2023.

At 8:01 a.m. on September 5, Ms. Landon provided late notice that she would be absent to care for her ill dog and because her mother was ill. Ms. Landon resided with her mother.

On September 6, Ms. Landon provided late notice at 7:36 a.m. that she would be absent from work that day so that she could take her dog to the veterinarian that afternoon.

On September 19 and 25, Ms. Landon provided late notice that she would be late for work because her dog did not want to come inside. In both instances, Ms. Landon did not contact the employer until after the scheduled start of her shift.

On September 27, Ms. Landon left work early due to illness and with proper notice to the employer.

On September 28, Ms. Landon gave late notice that she would be absent due to illness.

The employer at times raised concerns about Ms. Landon's attendance through text message exchanges. The employer did not issue any written reprimands or formal verbal reprimands to Ms. Landon for attendance.

Ms. Landon established an original claim for benefits that was effective September 8, 2024, 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.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating 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 Iowa Admin. Code r.871 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 871 IAC 24.32(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 evidence in the record establishes a discharge for misconduct in connection with employment, based on excessive unexcused absences. The evidence establishes a final unexcused absence on October 27, 2023, when the claimant provided late notice of her need to be absent due to illness. The claimant had provided late notice for similar absences on October 23, 24 and 26, 2023. Each of these absences was an unexcused absence under the applicable law because of the late notice to the employer.

The evidence establishes additional unexcused absences on July 12, 17, 19, and 21, as well as July 21, 2023, on which days the claimant was absent for all or part of her shift for personal reasons, matters of personal responsibility.

The evidence establishes additional unexcused absences on August 1, 4, 10, 11, 25, and 29, as well as on September 5, 6, 19, 25, and 28, on which days the claimant was either absent due to illness but with late notice to the employer or was absent for personal reasons, matters of personal responsibility.

The evidence establishes excused absences on July 31, August 23, August 24, and September 27, on which days the claimant was absent due to illness and with proper notice to the employer.

The employer presented insufficient evidence to prove unexcused absences on June 13, 15, 19, 20, and 26, July 26, and August 9, 2023. The employer lacked information regarding the details of those absences.

The claimant's unexcused absences were excessive and reflected a willful and wanton disregard of the employer's interests. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because the claimant received no benefits in connection with the claim, there is no overpayment of benefits to address.

DECISION:

The September 30, 2024 (reference 02) decision is REVERSED. The claimant was discharged on October 27, 2023 for misconduct in connection with the employment, based on excessive unexcused absences. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

November 1, 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.