

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

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**LATAVIA T FREEMAN**  
Claimant

**APPEAL 24A-UI-07715-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WATERLOO SKILLED NURSING FACILITY**  
Employer

**OC: 08/04/24  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Waterloo Skilled Nursing Facility, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) August 23, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Freeman eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from employment on July 15, 2024 for a reason that did not disqualify her from receiving UI benefits. On August 29, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Freeman for a telephone hearing scheduled for September 17, 2024.

The administrative law judge held a telephone hearing on Ms. Freeman. The employer participated in the hearing through Maddie Siems, human resources director, and Cary Miller, Personnel Planners hearing representative. Ms. Freeman participated in the hearing personally. The administrative law judge admitted Department's Exhibits 1-2 and Employer's Exhibits 1-2 as evidence.

The administrative law judge concludes Ms. Freeman is eligible for REGULAR (state) UI benefits based on how her job ended with this employer.

**ISSUES:**

Did the employer discharge Ms. Freeman from employment for disqualifying job-related misconduct?

Did IWD overpay Ms. Freeman REGULAR (state) UI benefits?

If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Freeman began working for the employer on February 7, 2024. She worked as a full-time certified nursing assistant (CNA). Her employment ended on July 23, 2024.

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<sup>1</sup> Appellant is the person or employer who appealed.

The employer's attendance policy requires an employee who will be absent or late to call in at least 2 hours before their scheduled shift and find another employee to work their shift if the employee will be absent. An employee accrues 1 point for each absence and 1/3 point for a tardy or leaving work early. At 9 points, the employee is subject to the employer terminating their employment. Ms. Freeman acknowledged receiving a copy of the policy on, or about, her hire date.

On June 2, the employer gave Ms. Freeman a first written warning for attendance issues. Ms. Freeman was absent on June 13 and the employer gave her a second written warning on June 17. Ms. Freeman left work early on July 6 and was absent on Saturday, July 13, so the employer gave her a third and final written warning on July 15. In all three warnings the employer warned Ms. Freeman that if she continued to violate the employer's attendance policy, the employer may discipline her up to and including terminating her employment.

On Monday, July 15, when the employer gave Ms. Freeman the final warning, Ms. Siems told Ms. Freeman that the employer scheduled her to work on Saturday, July 20 because she was absent on the previous Saturday, July 13. In May, Ms. Freeman requested time off from July 17 through July 22 to attend a family reunion out of state and the employer approved her request. Ms. Freeman told Ms. Siems that she would be out of town for a family reunion, to which Ms. Siems replied that Ms. Freeman would have to find a replacement worker. On Thursday, July 18, Ms. Freeman texted Ms. Siems that another employee (Employee A) agreed to cover one-half of her shift. Ms. Siems acknowledged receiving the message.

On Saturday, July 20, Employee A did not attend work because their child was sick. Ms. Freeman did not attend work because she was out of town. The employer assessed Ms. Freeman an attendance point, which put her at 8 3/4 points. On Tuesday, July 23, the employer terminated Ms. Freeman's employment for repeated absences and tardies.

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

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Freeman from employment on July 23, 2024 for a reason that does not disqualify her from receiving UI benefits.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

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:

...

(9) Excessive unexcused tardiness or absenteeism.

Iowa Admin. Code r. 871-24.32(7) and (8) provide:

(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**. [Emphasis added]

Excessive absenteeism is not considered misconduct unless the absences are also unexcused. 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. The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive.<sup>2</sup> The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings.<sup>3</sup> Second, the absences must be unexcused.<sup>4</sup> The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” or because it was not “properly reported.”<sup>5</sup>

An employer’s no-fault absenteeism policy or point system does not, on its own, decide the issue of qualification for UI benefits. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not voluntary. This is true 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.<sup>6</sup> Medical documentation is not essential to a determination that an absence due to illness should be treated as excused.<sup>7</sup> Absences related to other issues such as transportation, lack of childcare, and oversleeping are not considered excused.<sup>8</sup> When a claimant does not provide an excuse for an absence the absence is deemed unexcused.<sup>9</sup>

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>10</sup> The issue is not whether the employer made a correct decision in separating Ms. Freeman from employment, but whether he is entitled to unemployment insurance benefits.<sup>11</sup> Misconduct must be “substantial” to warrant a denial of job insurance benefits.<sup>12</sup>

<sup>2</sup> Sallis v. Emp’t Appeal Bd., 437 N.W.2d 895 (Iowa 1989).

<sup>3</sup> Higgins v. Iowa Dep’t of Job Serv., 350 N.W.2d 187, 192 (Iowa 1984).

<sup>4</sup> Cospers v. Iowa Dep’t of Job Serv., 321 N.W.2d 6, 10 (Iowa 1982).

<sup>5</sup> Higgins, 350 N.W.2d at 191; Cospers, 321 N.W.2d at 10.

<sup>6</sup> Iowa Admin. Code r. 871-24.32(7); Cospers, 321 N.W.2d at 9; Gaborit v. Emp’t Appeal Bd., 734 N.W.2d 554 (Iowa Ct. App. 2007).

<sup>7</sup> See Gaborit, 734 N.W.2d at 555-558.

<sup>8</sup> Higgins, 350 N.W.2d at 191.

<sup>9</sup> Id.; see also Spragg v. Becker-Underwood, Inc., 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

<sup>10</sup> Cospers v. Iowa Dep’t of Job Serv., 321 N.W.2d 6 (Iowa 1982).

<sup>11</sup> Infante v. Iowa Dep’t of Job Serv., 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>12</sup> Newman v. Iowa Dep’t of Job Serv., 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy. But, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for UI benefits related to that separation. A decision about whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation of the employer's policy or rule is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to, or including, discharge for the incident under its policy.

The most recent incident leading the employer to discharge Ms. Freeman must be a current act of misconduct to disqualify her from receiving UI benefits. The most recent act for which the employer terminated Ms. Freeman's employment was because of her July 20 absence. Ms. Freeman was on approved PTO that day, and she found a replacement worker for that shift to the extent that she could. This absence is excused and is not misconduct. The employer has not established a current act of misconduct on the part of Ms. Freeman. So, she is eligible for REGULAR (state) UI benefits, as long as no other decision denies her UI benefits.

Since Ms. Freeman is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.<sup>13</sup>

**DECISION:**

The August 23, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Freeman from employment on July 23, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Freeman is eligible for REGULAR (state) UI benefits, as long as no other decision denies her UI benefits.



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Daniel Zeno  
Administrative Law Judge

September 19, 2024  
Decision Dated and Mailed

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<sup>13</sup> *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

**APPEAL RIGHTS.** If you disagree with this 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:

**Iowa Employment Appeal Board  
6200 Park Avenue 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: 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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.