

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

KAYCEE I CURRY
Claimant

DEE ZEE INC
Employer

APPEAL 24A-UI-07805-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kaycee I. Curry, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) August 29, 2024 (reference 02) unemployment insurance (UI) decision. IWD denied Ms. Curry REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on August 4, 2024 for excessive unexcused absences and tardies after the employer warned her. On September 4, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Curry and the employer for a telephone hearing scheduled for September 19, 2024.

The administrative law judge held a telephone hearing on September 19, 2024. Ms. Curry participated in the hearing personally. The employer participated through Lynn Lacy-Fligg, human resources (HR) assistant. The administrative law judge admitted Department's Exhibit 1, Claimant's Exhibits A-E, and Employer's Exhibits 1-8 as evidence. The administrative law judge did not admit Claimant's Exhibit F because Ms. Curry did not send these documents to the employer.

The administrative law judge concludes Ms. Curry is not eligible for REGULAR (state) UI benefits based on how her job ended with this employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Curry began working for the employer on March 6, 2023. She worked as a full-time machine operator 2 on third shift, 11:00 p.m. – 7:00 a.m. Her employment ended on August 6, 2024.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

The employer's policy requires an employee who will be late or absent to call the employer's attendance line at least 30 minutes before their scheduled shift. The policy further provides that the employer may terminate the employment of an employee who accrues 49 attendance points in a rolling 12-month period. Ms. Curry acknowledged receiving a copy of the policy on, or about, her hire date.

On July 10, 2023, the employer gave Ms. Curry a written warning for attendance issues. Ms. Curry had 37 points at this time. On June 9, 2024, the employer gave Ms. Curry a second written warning for attendance issues. Ms. Curry had 36 points at this time. On July 24, 2024, the employer gave Ms. Curry a final written warning. Ms. Curry had 50 points at this time. In each warning, the employer warned Ms. Curry that her job was in jeopardy and future attendance issues could lead the employer to terminate her employment.

On August 5, 2024, just over 1.5 hours before her 11:00 p.m. shift, Ms. Curry texted her manager that her babysitter had smashed her car, so she didn't have transportation to work or childcare. The manager told Ms. Curry that the employer needed her at work and suggested that Ms. Curry contact HR. Ms. Curry did so at about 11:00 p.m. HR did not respond. Ms. Curry did not attend work due to lack of transportation and lack of childcare. The next day, the employer terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Curry from employment on August 6, 2024 for disqualifying, job-related misconduct.

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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of subrule eight is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises.

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.² The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings.³ Second, the absences must be unexcused.⁴ 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.”⁵

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.⁶ Medical documentation is not essential to a determination that an absence due to illness should be treated as excused.⁷ Absences related to other issues such as transportation, lack of childcare, and oversleeping are not considered excused.⁸ When a claimant does not provide an excuse for an absence the absences is deemed unexcused.⁹

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

² *Sallis v. Emp’t Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989).

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

⁴ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982).

⁵ *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d at 10.

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

⁷ See *Gaborit*, 734 N.W.2d at 555-558.

⁸ *Higgins*, 350 N.W.2d at 191.

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

¹⁰ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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

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

In this case, the employer gave Ms. Curry three written warnings for attendance issues and warned her that her job was in jeopardy each time. After the employer gave her the final written warning, Ms. Curry was absent again – from her August 5, 11:00 p.m. shift. That evening, Ms. Curry was in a tough spot. Ms. Curry wanted to keep her job, but she did not have childcare or transportation. Ms. Curry did what was best for her and her child, but unfortunately for Ms. Curry, the law considers absences due to lack of childcare and/or transportation as unexcused. The employer terminated Ms. Curry's employment for an unexcused absence after the employer warned her three times. The employer has established disqualifying, job-related misconduct on the part of Ms. Curry. So, Ms. Curry is not eligible for UI benefits.

DECISION:

The August 29, 2024 (reference 02) UI decision is AFFIRMED. The employer discharged Ms. Curry from employment on August 6, 2024 for disqualifying, job-related misconduct. Ms. Curry is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

September 20, 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines IA 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 IA 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.