



Department of Inspections,
Appeals, & Licensing

Iowa Department of Inspections, Appeals, & Licensing
Administrative Hearings Division
6200 Park Avenue, Suite 100, East Entrance
Des Moines, IA 50321-1270

Appeal Decision

Claim Number:

Determination Number:
7324087

Appeal Filed By:
VAN DIEST SUPPLY COMPANY

Appeal Filed Date:
06/16/2025

Appeals Bureau Docket:
2025142396-AT



APPEALS BUREAU DECISION OF ADMINISTRATIVE LAW JUDGE

Mail Date: August 4, 2025

Appellee

Claimant/Job Seeker: TANNER VAN EVERY

Claimant address: [Redacted]

Social Security Number: [Redacted]

Appellant

Employer: Van Diest Supply Company

Employer address: [Redacted]

In regard to the appeal by VAN DIEST SUPPLY COMPANY:

STATUTORY REFERENCE

- Iowa Code § 96.5(2)a - Discharge for Misconduct
- Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
- Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview

ISSUES STATEMENT

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

CASE HISTORY

The employer filed an appeal from the June 12, 2025, unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing scheduled for July 23, 2025. On June 27, 2025, employer requested a postponement due to witness unavailability. The request was granted. After due notice was issued, a telephone hearing was held on July 31, 2025. Claimant Tanner Van Every participated and testified. Employer Van Diest Supply Company participated through personnel manager Lisa Severe. Employer's Exhibits A - F were received. The administrative law judge took official notice of the administrative record.

Equal Opportunity:

Auxiliary aids and services are available upon request to individuals with disabilities. For deaf and hard of hearing, use Relay 711.



FINDINGS OF FACT

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance technician from March 6, 2023, until April 14, 2025, when he was discharged.

Employer has a no-fault attendance policy, which designates points to attendance infractions. An employee starts employment with ten points. (Exhibit B). If they are absent for up to four hours, employer deducts ½ point. More than four hours results in a one point deduction. An employee is subject to discharge if they have a zero point balance, unless they provide a doctor's note for the final absence that led to zero points. Employees are also expected to notify the employer by telephone prior to a shift if they are unable to work.

Claimant was absent from work and accumulated points over several dates during his employment for illness or injury. On occasion his points balance would get down to one point, but employer gave employees ½ point for each month they had perfect attendance; this led to the fluctuation in claimant's attendance balance. (Exhibit D).

Claimant properly reported his absences. The final absence occurred on April 2, 2025, when claimant called in because he injured his leg. This dropped his points balance to zero. Employer asked claimant to provide a doctor's note to excuse the absence, and he failed to do so. On April 14, 2025, employer discharged claimant for violating its attendance policy by dropping to zero attendance points. (Exhibit A).

The administrative record reflects that claimant has not received any unemployment benefits since filing a claim with an effective date of May 18, 2025. Employer participated in the fact-finding interview through witness Lisa Severe.

CONCLUSION OF LAW

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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 even 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. 871-24.24(6) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the claimant's duty to the employer and is considered misconduct except for illness or other reasonable grounds so long as properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, 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. Iowa Admin. Code r. 871-24.24(6); *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). 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. Iowa Admin. Code r. 871-24.24(6) (emphasis added).

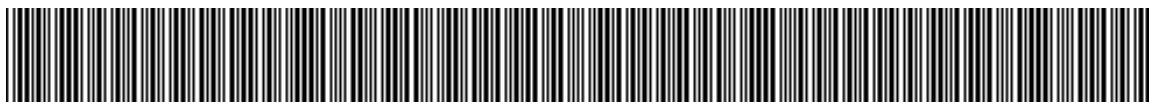
The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895, 897 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper v. Iowa Dept. of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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. *Higgins* at 190. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper* at 10-11. Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Id.*

Excessive absenteeism has been found when there have been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins* at 192; *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa App. 1984); *Armel v. Emp't Appeal Bd.*, No. 07-0463, 2007 WL 3376929, at *3 (Iowa App. Nov. 15, 2007); *Hiland v. Employment Appeal Bd.*, No. 12-2300, 2013 WL 3458145, at * 3 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517, 518 (Iowa App. 1982).

Based on the evidence presented, the administrative law judge concludes the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. While employer maintains a policy that absences are not excused unless a medical note is provided, as noted above the law in Iowa is that an absence due to illness that is properly reported is considered excused. Because the last absence on April 2, 2025, was related to properly reported illness, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.


Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance



benefits and relief of charges are moot.

DECISION/REMAND

The June 12, 2025, unemployment insurance decision is AFFIRMED. There was no disqualifying separation with this employer. The claimant is allowed benefits, provided they remain otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment, repayment and chargeability are moot.



Stephanie ADKISSON

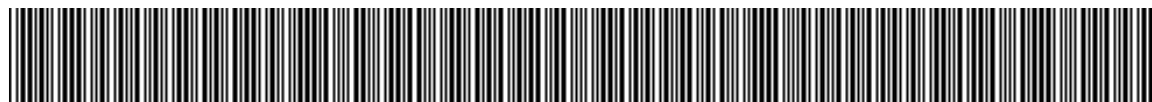
Administrative Law Judge

Iowa Department of Inspections, Appeals, & Licensing

Administrative Hearings Division

Unemployment Insurance Appeals Bureau

Please see the last page of this document for important information about reopening the appeal and further appeal rights.



INSTRUCTIONS FOR FILING AN APPEAL

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 Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
Online: IowaWORKS account

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. A reference to the decision from which the appeal is taken.
2. That an appeal from such decision is being made and such appeal is signed.
3. 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.

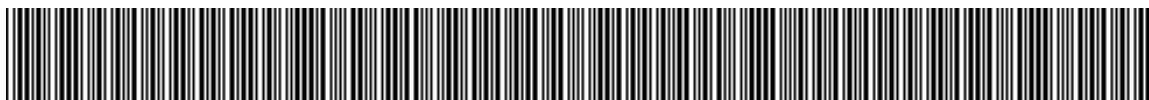
2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional 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 Iowa 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 the 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.



Babel Notice – Claim and Appeal Information

Aviso: Aviso: Documento De Beneficios Del Seguro De Desempleo
Y Información De Apelación

IMPORTANT!

This document contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document. **DEADLINE FOR APPEAL:** If you disagree with this determination or decision, you must file an appeal before the deadline noted in this document. **IMMEDIATELY:** If needed, call 866-239-0843 for assistance in the translation and understanding of the information in the document(s) you have received.

¡IMPORTANTE!

Este documento contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento. **PLAZO LÍMITE PARA APELAR:** Si usted está en desacuerdo con esta determinación o decisión, debe presentar una apelación antes del plazo límite indicado en este documento. **INMEDIATAMENTE:** Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 866-239-0843.

重要提示！

这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。

上诉截止日期：如果您不同意本裁定或决定，您必须在本文件所载截止日期前提出上诉。**立即：**如果需要，请拨打866-239-0843，可获得帮助，以利您翻译和理解所收到的文件中的信息。

IMPORTANT!

Ce document contient des informations importantes sur vos droits d'allocation de chômage, vos responsabilités et/ou vos bénéfices. Il est indispensable que vous compreniez le contenu de ce document. **DATE LIMITE POUR FAIRE APPEL:** Si vous n'êtes pas d'accord avec cette détermination ou décision, vous devrez faire un appel avant la date limite signalée dans ce document. **IMMÉDIATEMENT:** Si nécessaire, téléphonez au 866-239-0843 pour avoir de l'assistance sur la traduction et/ou la compréhension de ce document.

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Ang mga dokumentong ito ay naglalaman ng mahalagang impormasyon tungkol sa iyong mga karapatan na makatanggap ng kabayaran, mga responsibilidad at /o benepisyo dahil sa pagkawala ng trabaho. Napakahalagang maunawaan mo ang mga impormasyong nilalaman sa dokumentong ito. **HULING ARAW PARA UMAPILA:** Kung hindi ka sumasang-ayon sa pagpapasiya o desisyon, dapat kang maghabol o magharap ng apila bago dumating ang huling araw na nabanggit sa dokumentong ito. **KAAGAD:** Kung kinakailangan ang tulong, tumawag sa 866-239-0843 para sa pagsasalin ng wika at pag-unawa ng impormasyon sa mga dokumentong natanggap mo.

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Questo documento contiene informazioni importanti sui Suoi diritti di indennizzo di disoccupazione, sulle sue responsabilità e i suoi benefit. E' cruciale che Lei comprenda appieno le informazioni contenute in questo documento. **SCADENZA PER IL RICORSO:** Se non si trova in accordo con questa determinazione o decisione, dovrà presentare ricorso prima della scadenza riportata nel presente documento. **INMEDIATAMENTE:** In caso di necessità chiami il 866-239-0843 per assistenza alla traduzione e comprensione delle informazioni contenute nei documenti ricevuti.

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ໝາາງເຫລອ ສາ

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هام!

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