

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

PORSCHÉ RUCKER
Claimant

LOFFREDO GARDENS INC
Employer

APPEAL 24A-UI-07707-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:

Porsche Rucker, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) August 22, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Rucker REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on June 24, 2024 for violating a known company rule. On August 29, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Rucker and the employer for a telephone hearing scheduled for September 16, 2024.

The administrative law judge held a telephone hearing on September 16, 2024. Ms. Rucker participated in the hearing personally. The employer Jamie Benton, human resources generalist. The administrative law judge admitted Department's Exhibit 1 and Claimant's Exhibit A as evidence.

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

ISSUE:

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

FINDINGS OF FACT:

The decision in this case rests, in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.² The administrative law judge may believe all, part or none of any witness's testimony.³ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and

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

² *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

³ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

experience.⁴ In determining the facts, and deciding what testimony to believe, the administrative law judge may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.⁵

The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his own common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Rucker began working for the employer on April 17, 2024. She worked as a full-time receiving clerk. Her employment ended on June 24, 2024.

The employer's policy requires an employee to call in to their manager if the employee will be absent from work or late to work. The policy further provides that the employer may terminate the employment of an employee who accrues 5 attendance points during the 90-day new hire probation period. Ms. Rucker acknowledged receiving a copy of the policy on, or about, her hire date.

On May 17, the employer gave Ms. Rucker a written warning for attendance issues. Ms. Rucker had accrued 11 points at this time. The employer warned Ms. Rucker that if continued to accrue points the employer may terminate her employment.

Ms. Rucker was late to work three times in May and she called in sick three times in June. On Tuesday, June 18, Ms. Rucker was late to work again. Ms. Rucker was scheduled to work at 7:30 a.m., but she did not arrive until 9:42 a.m. Ms. Rucker did not call in before her shift or tell the employer why she was late.

At some point, Ms. Rucker's two-up manager told her that they would meet on Friday, June 21 to talk about her attendance. Ms. Rucker left early on June 21 because her home was on fire. On Monday, June 24, the employer terminated Ms. Rucker's employment for continued violations of the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Rucker from employment on June 24, 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:

⁴ *Id.*

⁵ *Id.*

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.⁶ The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings.⁷ Second, the absences must be unexcused.⁸ 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."⁹

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

⁶ Sallis v. Emp't Appeal Bd., 437 N.W.2d 895 (Iowa 1989).

⁷ Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 192 (Iowa 1984).

⁸ Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 10 (Iowa 1982).

⁹ Higgins, 350 N.W.2d at 191; Cosper, 321 N.W.2d at 10.

employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy.¹⁰ Medical documentation is not essential to a determination that an absence due to illness should be treated as excused.¹¹ Absences related to other issues such as transportation, lack of childcare, and oversleeping are not considered excused.¹² When a claimant does not provide an excuse for an absence the absences is deemed unexcused.¹³

The employer has the burden of proof in establishing disqualifying job misconduct.¹⁴ The issue is not whether the employer made a correct decision in separating Ms. Rucker from employment, but whether she is entitled to unemployment insurance benefits.¹⁵ Misconduct must be “substantial” to warrant a denial of job insurance benefits.¹⁶

In this case, the employer gave Ms. Rucker a written warning for attendance issues and warned her that her job was in jeopardy. After the employer gave her the warning, Ms. Rucker was late four more times. The employer did not terminate Ms. Rucker’s employment because she left early on June 21 due to the house fire. The employer told Ms. Rucker before June 21 that they would meet that day, and the employer had already decided to end Ms. Rucker’s employment. The employer ended Ms. Rucker’s job because she was late four times after the employer warned her. The employer has established disqualifying, job-related misconduct on the part of Ms. Rucker. So, Ms. Rucker is not eligible for UI benefits.

DECISION:

The August 22, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Rucker from employment on June 24, 2024 for disqualifying, job-related misconduct. Ms. Rucker 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 19, 2024
Decision Dated and Mailed

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¹⁰ 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).

¹¹ See *Gaborit*, 734 N.W.2d at 555-558.

¹² *Higgins*, 350 N.W.2d at 191.

¹³ *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

¹⁴ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

¹⁵ *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

¹⁶ *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.