

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DENISE J SOMMERFELT
Claimant

APPEAL NO. 11A-UI-00193-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY MEMORIAL HOSPITAL
ALLEN MEMORIAL HOSPITAL**
Employer

OC: 04-19-09
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 29, 2010, reference 07, decision that allowed benefits. After due notice was issued, a hearing was held on February 15, 2011. The claimant did participate. The employer did participate through Robin Elliot, human resources manager; Ann Krizan, nurse manager; Lynne Niemann, director of nursing and patient care; and Sarah Trainor, chief financial officer. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a certified nurse's aide, part-time, beginning June 14, 2010, through October 14, 2010, when she was discharged. The employer scheduled a number of training sessions for employees to receive training to comply with the Emergency Medical Treatment and Labor Act (EMTLA). All employees were allowed to pick which training session they would attend. The claimant signed up to attend the 2:00 p.m. training session on October 12, 2010. She did not show up for the meeting nor did she call to explain her absence. The administrative law judge is persuaded that the claimant signed herself up for the class. There was no reason for any other person to add her name to the list. On October 14 when the employer questioned why she had not attended the EMTLA training meeting, the claimant simply indicated that she had forgotten about the meeting. On October 4 the claimant was warned that her probationary period was being extended an additional 60 days due to her poor attendance. The claimant had also been warned on September 28, 2010 when she was a no-call, no-show for a training shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

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.

871 IAC 24.32(7) provides:

(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.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 29, 2010 (reference 07) decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw