

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEFANIE QUINN**

Claimant

**APPEAL NO: 14A-UI-00095-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**

Employer

**OC: 12/01/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 27, 2014. The claimant participated in the hearing. Michelle Pendleton, Program Manager and Angie Maus, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time developmental aide for Black Hawk County from August 24, 2011 to December 3, 2013. She was discharged from employment due to a final incident of absenteeism that occurred on November 30, 2013.

The employer's policy on tardiness went into effect November 1, 2013, and stated that any incident of tardiness of one hour or more would be considered an unexcused absence. Four unexcused absences within a rolling 12-month period results in termination.

The claimant called the employer February 5, 2013, and stated she would be about 30 minutes late but arrived more than one hour late and that incident of tardiness was considered an unexcused absence. She called in to report she did not have childcare February 27, 2013, and did not have any paid time off to cover her absence so it was considered an unexcused absence. She overslept and was more than one hour tardy March 9, 2013, and that was considered an unexcused absence. She arrived one hour and one minute late November 30, 2013, resulting in her fourth unexcused absence and her employment was terminated December 3, 2013, for exceeding the employer's allowed number of unexcused absences.

The claimant was counseled about her attendance October 1, 2012 and January 9, 2013 (Employer's Exhibits One and Two). She also received a verbal warning January 9, 2013 (Employer's Exhibit Three). She received a written warning for her attendance February 15, 2013 and a written warning and one-day suspension March 14, 2013 (Employer's Exhibits Four and Five).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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).

The claimant had a poor history of attendance throughout her tenure with the employer. The employer, however, changed its attendance policy several times while the claimant was employed with the county and employees were allowed to start with a clean slate with each change in policy. Consequently, the claimant's employment was allowed to continue despite her record of excessive unexcused absenteeism.

The only four incidents of tardiness or absenteeism the employer counted toward the claimant's termination occurred February 5, February 27, March 9 and November 30, 2013. While the claimant was warned about her attendance and knew her job was in jeopardy, four incidents of unexcused absenteeism within a 10-month period of time is not excessive. Additionally, the claimant did not have an unexcused absence between March 9 and November 30, 2013. Under these circumstances the administrative law judge must conclude the claimant's absences do not rise to the level of excessive, unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The December 27, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs