

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE M DOUGLAS**  
Claimant

**APPEAL NO: 15A-UI-02341-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE PRINTER INC**  
Employer

**OC: 02/01/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 13, 2015, 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 March 25, 2015. The claimant participated in the hearing. Karen Michael, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibit One was 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 project management assistant for The Printer from May 9, 2013 to February 2, 2015. She was discharged for excessive tardiness without notifying her supervisor.

The claimant received a written warning November 10, 2014 after two incidents of tardiness that occurred October 24 and November 5, 2014 (Employer's Exhibit One). On October 24, 2014, the claimant was scheduled to work at 8:30 a.m. but did not arrive until 8:47 a.m. She was experiencing severe back pain and was having trouble walking. She left early October 23, 2014 to see her physician and was x-rayed and given pain medication. She texted her supervisor, Jessica Hoffman, and told her what was going on and assumed Ms. Hoffman would know that was the reason she was late October 24, 2014. On November 5, 2014, the claimant was scheduled to work at 8:30 a.m. At 9:46 a.m. Ms. Hoffman called the claimant to ask why she was late and the claimant explained her alarm did not go off. She arrived at 10:31 a.m.

On December 17, 2014, the claimant received a final written warning because she was tardy December 16, 2014. She was scheduled to work at 8:30 a.m. but called Ms. Hoffman and stated she was not feeling well but was getting ready for work and would be in although she would be late. She was not there by 11:30 a.m. so Ms. Hoffman contacted her and the claimant stated she fell back to sleep and would not be in until the next day. The claimant had a

migraine, which usually makes her ill for one to three days. She had gone home early with the migraine December 15, 2014 and woke up with it December 16, 2014. She took her medication, which makes her drowsy, and fell asleep again after speaking to Ms. Hoffman. The final written warning stated the claimant needed to have “regular, consistent attendance with no unplanned or unexcused absences for the next six months. Any further unexcused absences and/or incidents of lack of proper notification regarding her absences within the next 6 months will result in further disciplinary action up to and including termination” (Employer’s Exhibit One). The claimant told Ms. Hoffman she disagreed with the warning and did not want to sign it but Ms. Hoffman did not acknowledge her comments. The employer’s warning forms do not provide a space for employees to make comments about the incident they are being disciplined for and does not provide a box for employees to state whether they agree or disagree with the warning.

On February 2, 2015, the claimant was scheduled to work at 8:30 a.m. She texted Ms. Hoffman at 9:32 a.m. stating, “I know I screwed up” (Employer’s Exhibit One). Ms. Hoffman responded that the claimant needed to see her when she arrived at the office (Employer’s Exhibit One). The claimant stated she started her menstrual cycle that morning which causes her to experience insomnia, migraines, and backaches among other symptoms. When the claimant got to work Ms. Hoffman stated she would have to talk someone else in the company about the situation and sent the claimant to work. The claimant was called to the human resources office between 12:30 and 12:45 p.m. and notified her employment was terminated for excessive unexcused absenteeism.

#### **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 § 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.

Iowa Admin. Code r. 871-24.32(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 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 absenteeism, is considered excessive. Benefits are withheld.

The claimant was tardy on three occasions and absent one day between October 24, 2014 and February 2, 2015. While two of the claimant's incidents of tardiness and the incident of absenteeism were due to the claimant having a severe back problem, a two-day migraine, and starting her menstrual cycle, she failed to properly report her absences to her supervisor October 24 and November 5, 2014, and February 2, 2015. Although the claimant felt Ms. Hoffman should have known why she was late because she had either left early the day before due to illness or texted her following a doctor's appointment, the claimant cannot expect the employer to keep track of her in that fashion or make assumptions about why she is not there if she does not report her absence or tardiness. The claimant should have called or texted Ms. Hoffman as soon as possible upon learning she would be absent or tardy as was her responsibility and not that of Ms. Hoffman.

The employer issued the claimant a written warning and a final written warning during her last four months of employment with the latter, dated December 17, 2014, stating the claimant could not accrue any additional absences within the next six months. While the employer's warnings do not allow an employee to comment on the situation or indicate they agree or disagree with the warning, both of which should be included, especially when Iowa case law states an employee may be discharged for misconduct for refusing to sign a warning. Green v. IDJS, 299 N.W.2d 651 (Iowa 1980). The claimant disagreed with the warning and believed it should not have been issued because it was due to illness but did not have anywhere on the warning to indicate that.

The employer's attendance policy is very general in nature and does not define excessive absenteeism. Employees are expected to be at work and ready to work at their scheduled start time and to call the employer and notify it if they will be late, both of which are reasonable expectations. When the employer does not state what will be considered excessive, however, the rules are not always consistently enforced by the various managers leaving employees to guess what will be allowed.

In this case the claimant's absences may not have been excessive and three of the four were due to some type of illness. The claimant, however, failed to properly report three of her four absences, including the absence February 2, 2015, after she had been warned that another occurrence in the next six months would result in her termination. Had she properly reported her absences, the outcome of this case would likely have been different.

Under these circumstances, the administrative law judge must conclude the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be denied.

**DECISION:**

The February 13, 2015, reference 01, decision is affirmed. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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