

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BRITTANY RAINEY**  
Claimant

**APPEAL NO: 19A-UI-06477-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERTCH CABINET MFG INC**  
Employer

**OC: 07/21/19**  
**Claimant: Appellant (1)**

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 August 7, 2019, 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 September 9, 2019. The claimant participated in the hearing. Mitzi Tann, Human Resources Director and Curtis Wildeboer, Department Leader, participated in the hearing on behalf of the employer.

**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 face frame apprentice for Bertch Cabinet Manufacturing from February 18, 2019 to June 6, 2019. She was discharged from employment due to a final incident of absenteeism that occurred on June 5, 2019.

The employer's attendance policy is based on attendance over a six month floating period. A first violation results in a verbal warning; a second violation results in a written warning; and a third violation results in termination of employment. Tardiness is defined as reporting for work after the start time and is two hours or less in duration. A tardy equals ½ of an absence.

The claimant was scheduled to work 6:00 a.m. to 4:00 p.m. Monday through Thursday. On February 25, 2019, the claimant called in sick, on March 12, 2019, she called in sick; on March 19, 2019, the claimant called the employer to report she was having car problems and would be late and arrived at 6:15 a.m.; on April 3, 2019, she called in sick; on April 5, 2019, she called in sick; on April 10, 2019, she called in sick; on April 19, 2019, she called in sick; on June 3, 2019, she clocked in at 8:59 a.m. and received an unexcused absence; on June 4, 2019, she clocked in at 7:59 a.m.; and on June 5, 2019, she called in stating she would not be in because she had things she needed to do outside work. The employer terminated the claimant's employment June 6, 2019, for excessive unexcused absenteeism.

The claimant received a first written warning March 20, 2019, and a second written warning April 15, 2019, before her termination June 6, 2019.

**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, 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 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 three absences, including the two incidents of tardiness, were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The August 7, 2019, 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

je/scn