

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA TRAYWICK
Claimant

APPEAL NO. 09A-UI-01019-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

**OC: 12-21-08 R: 03
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 14, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 9, 2009. The claimant did participate and was represented by Michael A. McEnroe, Attorney at Law. The employer did participate through Mitzi Tann, Human Resources Director and John Schleuder, Quality Director. Claimant's Exhibit A was received. Employer's Exhibits One through Fourteen were entered and received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a quality assurance apprentice full time beginning May 23, 2005 through July 25, 2008 when she was discharged.

The claimant had been off work since June 24, 2008 after suffering a work-related injury when some materials fell on top of her. Her absences after that time were primarily covered by workers compensation leave.

The claimant returned to work on July 17 and went to punch in on the time clock when she discovered her timecard would not work. On July 20, she called and left a message for John Schleuder telling him that her time card did not work and when she had inquired why two leaders had told her that it was because she was no longer considered an employee.

The claimant was contacted by Mr. Schleuder and Gary Brandau on July 21 by telephone call. The employer agreed to investigate to determine why the claimant's timecard would not work. The employer determined that the claimant had not been at the worksite at all on July 17, 2008 and that she had not tried to swipe her timecard. The employer could not locate anyone who had seen the claimant on July 17.

The claimant was previously absent on April 16 when she called in sick and on May 5 when she did not report for work thinking that her work shift had been cancelled due to a fire in the sawmill. She received one-half point for punching in late to work on May 13. Between May 13 and July 17 the claimant did not accumulate any attendance points as her absences were covered by her workers compensation leave. The claimant's last warning for attendance was on May 27, 2008 for the incident when she punched in two minutes late on May 13, 2008.

When the employer determined that the claimant had not been at the plant on July 17 she was discharged for excessive absenteeism. In the letter the claimant was sent on July 25 notifying her of her discharge, the employer did not mention any other reason for the claimant's discharge other than her attendance issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The administrative law judge cannot conclude that the claimant did not report for work on July 17. While the employer alleges she was not there and that she did not try to swipe her time card, the evidence does not support that conclusion. The claimant's message to Mr. Schleuder clearly does indicate that she had attempted to work. Because the employer's evidence does not establish a final incident of unexcused absenteeism, the administrative law judge concludes that the claimant is eligible for unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 14, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css