

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIYAH M TAYLOR
Claimant

APPEAL NO. 17A-UI-04499-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT
SERVICES LLC**
Employer

OC: 04/02/17
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Heartland Employment Services (employer) appealed a representative's April 18, 2017, decision (reference 01) that concluded Mariyah Taylor (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 17, 2017. The claimant participated personally. The employer was represented by Amelia Gallagher, Hearings Representative, and participated by Andrew Benjamin, Client Service Representative; Stacy Harmon, Human Resources Director; Cassandra Johnson, Administrator; and Sara Goedken, Director of Nursing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 21, 2016, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on October 21, 2016. The employer has a policy that indicates an employee who is absent without notice within the first ninety days of employment will receive a final written warning. If the employee is absent twice without notice during the employees first ninety days, the employee will be terminated.

On December 28, 2016, the employer issued the claimant a final written warning for failure to notify the employer of her absence on December 18, 2017. The employer notified the claimant that further infractions could result in termination from employment. On January 2 and 3, 2017, the claimant was absent without notice. The employer terminated the claimant on its records but was unable to communicate this to the claimant because the claimant never made contact with the employer again.

The claimant filed for unemployment insurance benefits with an effective date of April 2, 2017. She received no benefits after the separation from employment. The employer provided documents in lieu of personal participation in the fact-finding interview on April 17, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

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

DECISION:

The representative's April 18, 2017, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs