

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAISA E JONES
Claimant

MARSDEN BLDG MAINTENANCE LLC
Employer

APPEAL 16A-UI-10650-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/11/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 29, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2016. Claimant participated. Employer participated through Candi Wickett, Manager and was represented by Kevin Salmon of Equifax.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a general cleaner beginning on January 8, 2014 through September 13, 2016 when she was discharged. The claimant was given a handbook or policy manual that put her on notice about the attendance policy. She knew that if she had more than six unexcused absences in a year period she would be discharged. She was given a warning for attendance on March 10, 2016. The claimant's car broke down around August 22, 2016 and from that point forward she was forced to rely on the bus to get to work until she could get her car fixed. She was able to be on time to work for about one week while taking the bus. The claimant was late to work on August 30, (45 minutes); August 31, (15 minutes); September 1, (16 minutes); September 2, (2 minutes); September 6, (25 minutes); September 7, (18 minutes) and September 9, (47 minutes). The claimant knew she was obligated to report to her supervisor if she was going to be late, but did not always do so. Just reporting an absence or that one is going to be late does not make the incident excused under the employer's policy. The claimant was not discharged because of an erroneous text, but simply because she exceed the employer's allowed absences by being tardy to work seven times in the last two weeks of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 as to when and why the employee is unable to report to work. The claimant was late to work seven times in her last two weeks of employment due to transportation issues. Those absences are not considered excused. The employer has established that the claimant was warned and knew that the policy provided discharge upon reaching six unexcused incidents. The final absences were not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are denied.

DECISION:

The September 29, 2016, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs