

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERISA A CROSSLAND
Claimant

APPEAL NO. 13A-UI-08191-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENERAL DYNAMICS INFO TECH
Employer

OC: 06/02/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 2, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone partial hearing was held on August 19, 2013. Claimant participated for a period of time but her phone dropped the connection. Employer responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate. Nor did the employer respond by the close of business on August 19, 2013. The administrative law judge took official notice of the administrative record, consisting of claimant's documents most of which are dated after the separation.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a help desk technician from July 2, 2012 and was separated from employment on June 6, 2013. The employer did not provide any general or detailed information about why the claimant was discharged. Claimant was told she was discharged because of absenteeism. Her last absence was on May 29, 2013, the day after she was assaulted by her husband. During that attack, he also broke her phone. She had a temporary protective order against him. She walked to a nearby store to call her supervisor to report she would be late. She paid someone to take her children to her mother's home for child care. She was on her way to the bus stop when a thunder and lightning storm started so went back home without calling her supervisor. Most of her attendance issues were related to her abusive husband and his actions with the stated intent to get her fired from her job. When he moved out, he took their only vehicle with him and would not allow his mother to watch the children while claimant went to work. She did have absences related to ill children and a snowstorm. She also missed work on May 28, 2013, to attend a court appointment about the resolution to the charge of domestic abuse against her. The employer warned her about attendance in early May 2013 and again another time after she used 40 hours of leave time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The final absence was a result of a lack of transportation (declining to proceed to the bus stop in the rain) and not related to any injury from the domestic assault the night before. The claimant admitted she 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 unexcused absences related to her sentencing on May 28, 2013, and a snowstorm, is considered excessive. Benefits are withheld.

DECISION:

The July 2, 2013 (reference 01) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs