

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOYLANDA L FLEMING
Claimant

APPEAL NO. 15A-UI-12339-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PREMIUM LLC
Employer

OC: 10/11/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Toylanda Fleming (claimant) appealed a representative's November 2, 2015 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Iowa Premium (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 24, 2015. The claimant participated personally. The employer participated by Doug Baker, Director of Human Resources.

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 January 22, 2015; as a full-time general laborer. The claimant worked eight to ten hour days. The employer has a handbook but the claimant did not receive it. The handbook states that an employee will be terminated if he or she receives twelve attendance points. On September 3, 2015, the employer issued the claimant a written warning for attendance. The claimant was absent twice for her own medical issues, once to care for her sick four-year old daughter, twice for personal reasons, and two times for reasons she could not remember. She properly reported all her absences. The employer notified the claimant she had ten attendance points and that further infractions could result in termination from employment.

On October 13, 2015, the claimant left work early due to child care issues. The claimant received one-half attendance point for her absence. On October 14, 2015, the claimant was absent again due to child care issues. The claimant received two attendance points for her absence. She properly reported her absences both days. On October 15, 2015, the claimant did not report to work or notify the employer of her absence. She received three attendance points for her absence. On October 16, 2015, the employer terminated the claimant for excessive absenteeism.

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 unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's November 2, 2015 (reference 01) decision is affirmed. 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/can