

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARIEL BRUCE
Claimant

HUCKLEBERRY ENTERTAINMENT LLC
Employer

APPEAL 19A-UI-09767-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/19
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ariel Bruce (claimant) appealed a representative's December 6, 2019, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Huckleberry Entertainment (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 31, 2019. The claimant participated personally. The employer participated by Steve Morley, Director of Human Resources. The employer offered and Exhibit One 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 May 3, 2019, as a full-time cook. The claimant signed for receipt of the employer's handbook on May 15, 2019. The employer had a point system for attendance. If workers accumulate twenty attendance points, they will be terminated.

The claimant was tardy and earned one attendance point for each day on May 6, 7, June 2, July 16, 28, and October 9, 2019. She was absent on May 26, June 16, August 4, August 30, 2019. Her absences were due to care of sick children, transportation issues, and a death in the family. On July 22, 2019, the employer issued the claimant a written warning for accumulating 9.75 points. On September 2, 2019, the employer issued the claimant a written warning and one-day suspension for accumulating 15.5 points. The employer notified the claimant in both warnings that further infractions could result in termination from employment.

On October 21, 2019, the claimant was one hundred sixteen minutes late for work because she had to transport her son to school. After her tardiness on October 21, 2019, the claimant had accrued 20.5 attendance points. On October 23, 2019, the employer terminated the claimant for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 December 6, 2019, decision (reference 02) 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/scn