

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODINE K CLAEYS

Claimant

APPEAL NO. 16A-UI-09155-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 12/20/15

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Jodine Claey's (claimant) appealed a representative's August 12, 2016, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits due to her separation from work with Team Staffing Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 12, 2016. The claimant participated personally. The employer participated by Sarah Fiedler, Human Resources Generalist. 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 employer is a temporary employment service. The claimant performed services from August 21, 2014, through July 26, 2016. She signed a document on August 14, 2014, indicating she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document which was separate from the contract for hire.

The claimant signed for receipt of the Team Staffing Solutions Attendance Policy for Employee Assigned to the Winegard Company on August 14, 2014. It clearly informs employees to report absences to the employer and Winegard. The policy states, "If an 8th un-excused absence occurs within the rolling 12 month period, the employee's work assignment may be ended at Winegard". The claimant properly reported some absences due to medical issues and those absences did not accrue against the claimant. The employer issued the claimant written warnings dated April 11, 2016, and July 5, 2016. These warnings listed absences on August 3, October 22, 2015, March 17, April 5, 11, 12, May 31, and June 30, 2016. When the claimant

reported her absences she did not indicate the reason for the absence. She also only reported the absence to either the employer or Winegard. The employer notified the claimant that further infractions would result in termination from employment.

On July 27, 2016, the claimant reported to Winegard that she would not be at work for her 6:00 a.m. shift. She did not give a reason. The claimant did not call the employer. The employer terminated the claimant at 10:45 a.m. on July 27, 2016, for excessive absenteeism. At the hearing the claimant said she was absent because her adult son was seen in the emergency room with high blood pressure. He was seen on July 27, 2016, at 2:27 p.m.

The claimant sought reassignment from the employer on July 29, August 4, and 11, 2016.

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 claimant did not properly report her absence or give an indication of the reason for absence. The employer asked employees to give an indication of the reason for the absence so the absence could be excused. The claimant did not do so for eight absences. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's August 12, 2016, 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/pjs