

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY A MCFADDEN
Claimant

HYPRO INC
Employer

APPEAL NO. 13A-UI-03240-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/10/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 8, 2013, reference 01, that held she was discharged for repeated tardiness on February 11, 2013, and benefits are denied. A hearing was held on April 16, 2013. The claimant participated. Amanda Schneider, HR; Travis Frush, Plant Manager; Mark DeVries, Supervisor; Joshua Blake, Production Manager; Karen Touve, HR Corporate; and Cindi Baumeister, HR Director, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time machine operator from November 28, 2011 to February 11, 2013. The claimant received the employer attendance policy that provides for progressive discipline.

The employer issued written warnings to claimant for work policy violation on September 11, and October 1, 2012. She was issued a final warning for attendance issues on December 19 that included tardiness. The employer expected claimant would be at work 15 minutes prior to the start of her shift (at 7:00 a.m.). She was put on notice that further occurrences could lead to employment termination. She was also told during her December annual performance review her attendance was unacceptable.

Production Manager Blake observed claimant clocked in late to work on February 8 and February 11 after 7:00 a.m. The employer discharged claimant on February 11, 2013 for excessive absenteeism/tardiness.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer established misconduct in the discharge of the claimant on February 11, 2013, for excessive "unexcused" absenteeism/tardiness.

The employer issued claimant a final warning for attendance issues on December 19. While it was an "expectation" she arrive at work 15 minutes prior to the start of her 7:00 a.m. shift, the tardiness issues on February 8 and 11 are based on clocking in after that time, and not the expectation period. Job disqualifying misconduct is established due to the final warning and subsequent tardiness incidents.

DECISION:

The decision of the representative dated March 8, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on February 11, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css