

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL WISE
Claimant

APPEAL NO. 14R-UI-06109-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

S-L SNACKS IA LLC
Employer

OC: 09/29/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 20, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on April 14, 2014. Claimant participated. Employer did participate through Melissa Stiffler, Human Resource Generalist. Employer's Exhibit One was entered and received into the record.

A decision issued on April 15, 2014 denied claimant unemployment insurance benefits. The claimant appealed to the Employment Appeal Board (EAB) who remanded for additional testimony on the claimant's last absence. An additional hearing was held on July 9, 2014. The claimant participated. The employer participated through Melissa Stiffler, Human Resources Generalist. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected 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 packer/general helper beginning on September 6, 2012 through February 3, 2014 when she was discharged for violation of the attendance policy. The employer has established that the claimant was tardy to work on January 22, 2014. She had been given a final warning on November 21, 2013 that put her on clear notice that she would be discharged if she reached 8 points. The employer's records show that when the claimant was entitled to have a point or a one-half point removed from her attendance record she was granted that privilege. The claimant did accrue 8 points under the employer's policy.

When an employee is required to work over-time, their name and required shift is posted on a bulletin board outside an office. The claimant worked on January 21, and her name was posted on the list to work overtime on January 22. The claimant knew she was required to check the schedule and did so. In order to have another employee cover her shift, the claimant was required to fill out a form and to have her supervisor sign off on the trade. She did not do so.

The claimant did not report for her over-time shift and neither did the employee who was allegedly to cover for her. The claimant's last absence had nothing to do with illness or injury. She failed to follow the known policies for obtaining permission to have another employee cover her shift. As such, her last absence is unexcused. The claimant's absences and the points she accumulated for each absence are set out accurately in Employer's Exhibit One.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 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 as to 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 February 20, 2014, (reference 02) decision is affirmed. The 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs