

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE S ROBERTS

Claimant

APPEAL NO. 12A-UI-04998-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 04/01/12

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the April 26, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 22, 2012. Claimant participated. Employer participated through benefits specialist, Mary Eggenburg and nurse manager, Trudy Laffoon.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a medical assistant (MA) on first shift from September 11, 2009 and was separated from employment on April 3, 2012. On March 13 she was scheduled to work at 8:00 a.m. She had requested to trade that day because of a dental appointment later in the afternoon. The MA lead worker told her to report at 8:00 a.m. and she was a no-cal/no-show. She would have been allowed to leave later in the shift to attend the dental appointment. She assumed it was her day off since there was some confusion about trading shifts. There was no written communication that a trade was made or approved. The employer did not investigate until March 27 because it waited for her to get back to work. On March 23 the employer sent her an e-mail advising her of the investigation and assignment of a representative. She was absent the morning of March 14, March 16, 20, 22, and 23 because of dental complications. March 21 was preapproved for FMLA leave. On March 26 a.m. she called in to report a dental follow up appointment. She ran out of leave time between March 20 and 26 so all absences, regardless of reason, counted against her. On February 23, 2012 the employer issued a written warning about attendance and a five-day suspension. She had no remaining leave time for absences on January 30 (sick six-year-old daughter), January 31 (medical, non-FMLA), February 2 (migraine medical, non-FMLA), and February 9 and 10, 2012 (FMLA). She had another written warning on September 1, 2011; however, all absences were related to her personal illness or her young child.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because all absences except the March 13, 2012 incident were related to properly reported illness or other reasonable grounds, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The April 26, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css