

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TORI L MOSLEY
Claimant

KOHL'S DEPARTMENT STORES INC
Employer

APPEAL 15A-UI-08605-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/05/15
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 July 24, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 21, 2015. Claimant did participate. Employer participated through Raye Moffitt, Store Manager.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she 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 part-time as a freight associate beginning on August 21, 2014 through June 22, 2015 when she was discharged.

When she was hired the claimant was given a copy of the employer's handbook and policies. She had demonstrated the ability in the past to properly report her absences due to illness. Under the employer's policy, any employee who reaches 13 attendance points or has more than three instances of no-call no-show in a year is discharged. The claimant was warned about her attendance on May 19 when she reached five attendance points. She had been warned about her first instance of no-call no-show on January 23, 2015. She was a no-call no-show for work again on June 13 and June 21. The claimant was ill and having personal issues so she did not call to report her absence. The claimant simply chose not to report her absences to the employer, despite having the ability to do so. The claimant's absences for June 13 and June 21 were not properly reported.

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 § 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). Absences due to **properly reported** illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's last two absences were not properly reported and are considered unexcused for the purposes of unemployment benefits. No employee is allowed any special consideration because they are working their first job.

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 July 24, 2015, (reference 01) 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