

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHOYCE JACKSON
Claimant

APPEAL NO: 10A-UI-13916-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE METH-WICK COMMUNITY INC
Employer

OC: 07-18-10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 29, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 19, 2010. The claimant participated in the hearing. Barb Teply, Director of Human Resources and Sallie Taylor, Supervisor of Community Care Health Services, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time CNA for The Meth-Wick Community from May 10, 2010 to July 19, 2010. She was discharged for excessive and ongoing tardiness. The claimant received a verbal warning from her supervisor June 30, 2010, due to tardiness and her repeated failure to clock in and out. She was placed on a two week probation and advised further problems could result in her termination. The employer told her that it had to have reliable people to work with the elderly and the claimant agreed her tardiness would stop. The claimant used another staff member's car July 2, 2010, to go to Kingston Hill to provide services for two residents. Services should have been 30 minutes for each resident but the claimant was gone for two hours. When questioned about it, she admitted she went to the grocery store. The claimant was with a resident July 15, 2010, but contacted the employer at 10:00 a.m. to report she had a medical appointment at 11:30 a.m. and asked if she could leave for an hour. The employer told her she needed to provide care for the resident she was with and would not be able to leave unless there was an emergency. The employer subsequently learned the claimant had asked another employee to relieve her of her duties and then asked if it would be okay if she left the resident alone while she went to her appointment. On July 16, 2010, the claimant contacted her supervisor at 3:15 p.m. to report that she would be an hour late for her 4:00 p.m. shift. Her supervisor advised her that it was important she be on time and told her to make the

necessary arrangements for her sick child. The supervisor had not heard back from the claimant by 3:35 p.m. so she called her and was informed the claimant had found childcare. The supervisor assumed the claimant would be at work on time since there was still 25 minutes remaining before her start time but she did not arrive on time. The supervisor called the claimant at 4:10 p.m. and the claimant said she would be there shortly. She did not arrive until 4:28 p.m. The claimant did not punch in or out July 17, 2010, so the employer does not know if she worked her 8:00 a.m. to 4:00 p.m. shift. She did not punch in July 18, 2010, but did punch out at 4:36 p.m. On that same date, the claimant completed her assignment at 11:10 a.m. but did not return to the office until 11:55 a.m. The claimant punched in for her 7:00 a.m. shift on July 19, 2010 at 7:42 a.m. Her employment was terminated July 19, 2010, due to attendance issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged July 19, 2010, for excessive absenteeism. 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). 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 absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The September 29, 2010, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css