

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ANN C BLAKESLEE**  
Claimant

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**APPEAL 18A-UI-06245-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/06/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 29, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2018. Claimant participated. Employer participated through Laura Rooney and David DeMaio. Claimant's Exhibit A was admitted into the record. Employer's Exhibit 1 was admitted 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 third shift parts clerk beginning on June 12, 2017 through May 8, 2018, when she was discharged for excessive absenteeism.

Claimant had been given a copy of the employer's attendance policy and knew that if she was going to miss work she was required to notify the employer at least one hour prior to the 9:00 p.m. start time of her work shift. On May 2, the claimant called the employer at 8:35 p.m. to notify them she would not be at work that evening. The claimant offered no explanation at hearing as to why she had not properly reported her absence.

The employer followed their own policy and suspended the claimant for reaching nine points for three days on December 16, 17 and 18. Suspension is the last step prior to discharge and the claimant knew or should have known at that point that she would be discharged if she accumulated twelve total attendance points prior to July 11, 2018.

On March 12, the claimant accumulated her twelfth attendance point when she reported that she had no transportation to get to work that night. The claimant did not report her absence until 9:39 p.m. and at hearing admitted that she was late because she had overslept. The

employer chose not to discharge her at that time but gave her another chance. The claimant then missed work again on May 2.

### 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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

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 May 29, 2018, (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/rvs