

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PENI S DAVIS
Claimant

APPEAL NO. 13A-UI-11790-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

OC: 09/15/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 7, 2013, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 13, 2013. Claimant participated. Employer participated through academic manager, Scott McDonald. Atena Parks observed. Deniece Norman of Employers Edge represented the employer. Employer's Exhibit 1 (pages 1 – 19) was received.

ISSUE:

Was the claimant discharged for disqualifying job related 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 GED instructor and was separated from employment on September 17, 2013. On September 9 she arrived at 7:45 a.m. for her 7:30 a.m. shift because of difficulty with her grandchildren. She had been warned in writing on June 22, 2013, about leaving early without permission on June 21. (Employer's Exhibit 1, p. 4) She had been warned in writing on May 28, 2013, about excessive absenteeism during her eight months' employment (40 hours' sick time, 16 hours personal time, 33.34 hours' vacation time). (Employer's Exhibit 1, p. 17) Upon examination of the attendance logs, McDonald also found she was tardy on September 4, 5, 6 according to time records kept by the welcome center security officer Gideon B. On August 22, 2013, there was a meeting for all staff members about refreshing information about the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

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. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 7, 2013, (reference 01) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css