

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNIE MILLER

Claimant

APPEAL NO. 11A-UI-07594-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 04-24-11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2011. The claimant participated in the hearing with Union President Joe Rush. Ben Wise, hiring supervisor, participated in the hearing on behalf of the employer. Department's Exhibit D-1 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: A disqualification decision was mailed to the claimant's last known address of record on May 18, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 28, 2011. That date fell on a Saturday followed by Memorial Day, so the appeal was due May 31, 2011. The appeal was not filed until June 8, 2011, which is after the date noticed on the disqualification decision. The reason the appeal was not filed in a timely manner was because the claimant did not receive the decision. She went to Workforce regarding another matter June 6, 2011, and while there inquired about the fact-finding decision, at which time she completed an appeal, which was sent from Workforce to the Appeals Section June 8, 2011. Because the claimant did not receive the decision, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time production worker for Cargill Meat Solutions from January 4, 2010 to March 30, 2011. The employer considered her to have voluntarily quit by failing to call in or show up for work March 28, 29 and 30, 2011. The claimant determined she was discharged the week of March 21, 2011. The claimant's last day worked was January 31, 2011. She left work because she was vomiting blood. She did not sign up for the employer's health insurance plan at the time of hire or during open enrollment in October 2010 because she

did not believe she would need it. As a result of her illness January 31, 2011, she had a friend take her to a doctor appointment in Iowa City, approximately 100 miles away, February 2, 2011. She was diagnosed with a non-work-related bleeding ulcer and excused from work from February 2 to February 14, 2011. When she returned to work February 14, 2011, the employer explained she and her physician had to complete FMLA paperwork and she needed a release to return to work because her absence exceeded three days. The employer gave her the FMLA paperwork with the due date on it. The claimant could not find another ride to Iowa City and when she called the doctor's office was told it would not do the FMLA paperwork for time beyond what the doctor excused her for when she saw him February 2, 2011, because it was considerably after that date. The claimant went to two doctors in Ottumwa, but they would not do the paperwork, because they were not treating her at the time. By the time the claimant had returned to the employer to notify it she could not get the FMLA paperwork completed, it was the week of March 21, 2011, and the deadline for submitting the paperwork had passed. The employer told her it could not put her back to work without the FMLA paperwork and a doctor's release to return to work and the claimant assumed her employment was terminated at that time, as she could not obtain the required documents. She had called in all of her absences to that point but stopped the week beginning March 28, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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(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). The claimant was off work due to properly reported illness from February 2 to February 14, 2011, with a doctor's excuse. Because her absence lasted more than three days, she was required to complete FMLA paperwork and obtain a full release to return to work. Unfortunately, the claimant was unable to provide that documentation, because by the time she contacted the Iowa City physician who treated her, the office said it could not fax her FMLA paperwork covering the

entire time she had been off work without seeing her again because she waited too long to call and could not find a ride to Iowa City. She did see two local doctors who also refused to do the paperwork because neither were her treating physician during the time in question. The claimant did call in to report her absences from February 15, 2011, until she felt her employment was terminated effective the week of March 28, 2011. While not unsympathetic to the claimant, the administrative law judge must conclude that her absences after February 14, 2011, while properly reported, were excessive and unexcused, as they were not due to illness after that date. Consequently, the administrative law judge must conclude the claimant was discharged for excessive, unexcused absenteeism. Therefore, benefits are denied.

DECISION:

The May 18, 2011, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw