

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE D CORONEL**  
Claimant

**APPEAL 17A-UI-02180-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD FARMLAND CORP**  
Employer

**OC: 10/09/16  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 15, 2017, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 21, 2017. Claimant did not participate. Employer participated through Becky Jacobsen, Human Resources Manager. Employer's Exhibit 1 was entered and received 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 production worker beginning on November 8, 2016 through January 27, 2017, when she was discharged. When she was hired the claimant was given a copy of the employer's attendance policy. The policy put her on notice that she would be considered a probationary employee for the first forty-five days of her employment. The claimant was put on notice that if she did not have good attendance her probationary period would be extended. The employer has a no-fault attendance policy. The claimant called in sick on November 18, 2016. She had no documentation from a medical provider to excuse her absence. She called in sick again on December 12, 2016, but did provide documentation from a medical provider. She was notified that because she had called in sick on two occasions before completing her forty-five day probationary period her probation was going to be extended an additional twenty days. The claimant was specifically told that her poor attendance was the cause for the extension of her probationary period.

The claimant called in absent for personal business on January 16 and 17. January 16 was a snow storm and the employer did not excuse employees, but did not hold any employee accountable for being late to work that day due to the weather. All employees returned to work on January 17. The claimant called in absent on January 25 and 26 again for personal business. It snowed again on January 25 and while the employer did not excuse absent employees, they again did not hold any employee accountable for being late to work. All

employees returned to work on January 26. The claimant told the employer she did not like to drive with her child in the car when it snowed. The claimant missed six days of work in fifty-five days of her employment. Her final four absences were not excused.

The claimant has not received any unemployment benefits after the separation from this employer. The employer did participate personally in the fact-finding interview through Becky Jacobson.

### **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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified 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 denied.

Since the claimant has not received any unemployment insurance benefits, the issue of overpayment of benefits is moot.

### **DECISION:**

The February 15, 2017, (reference 03) decision is reversed. 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. As no unemployment insurance benefits were paid to the claimant, the issue of any overpayment is moot.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs