IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GINA M JACOBSMA
Claimant

FARM BUREAU OF OSCEOLA COUNTY
Employer

APPEAL NO. 07A-UI-10445-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-07-07 R: 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 7, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 29, 2007. The claimant did participate. The employer did participate through Mark Bohner, Federation Regional Manager, (representative) Tom Wietzema, Licensed Agent, Lori Monier, Licensed Agent. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an office assistant part time beginning February 19, 2007 through July 25, 2007 when she was discharged.

The claimant was discharged when she was late to work by five minutes on July 25, 2007. The employer had not given the claimant a final warning that put her on notice that if she was late to work again she would be discharged. The claimant had no idea that her job was in jeopardy if she were late to work. The employer was also dissatisfied that the claimant would take her lunch hour but then return to the office and eat at her desk. No one on behalf of the employer told the claimant that eating at her desk was prohibited and that the claimant was to eat while on her lunch hour. The claimant denies that she was late on July 25.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 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 entitled to fair warning that the employer was no longer going to tolerate her performance and conduct, that is, being late to work. Without fair warning, the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment. The employer cannot establish excessive unexcused absenteeism as they have no specific dates that the claimant was late to work. Nor has the employer established that the claimant was warned that her tardiness was placing her employment in jeopardy. The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The November 7, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs