

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHINDA L FORD
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL 14A-UI-10881-LT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/20/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 13, 2014, (reference 08) 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 6, 2014. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

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 cleaner on third shift from July 17, 2014, and was separated from employment on August 5, 2014. At hire she told plant manager Erick Jackson she had plans to attend an annual family reunion for the weekend of Friday, August 1 through Sunday, August 3, 2014. He said that since she did not work Saturdays and Sundays he would give her the Friday night shift off from work to attend. She reminded him again the morning of Thursday, July 31 at the end of her shift and he reminded her supervisor Darren that she would not be at work Friday night, August 1. She became stranded in Illinois because of transportation issues so called and left a voice mail on Sunday, August 3. On Monday morning, August 4 she called secretary Regina who asked her to call again to speak with Jackson. She did so and also left another voice mail on the attendance line according to Jackson's instructions. She reported to work for the night shift on Tuesday, August 5 and supervisor Sherry told her that Jackson said her position was filled and her position was terminated. She confirmed that with Jackson in person. The employer had not previously warned claimant her job was in jeopardy for any reason. Her only other absence was because of an ear infection with a medical excuse.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work because of a lack of transportation is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because her absences were otherwise related to properly reported illness or were excused in advance, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The October 13, 2014, (reference 08) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed,

provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant. The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css