

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNA M VAUDT
Claimant

I C SYSTEM INC
Employer

APPEAL NO. 12A-UI-13589-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated October 31, 2012, reference 01, that held she was discharged for excessive unexcused absenteeism on October 17, 2012, and benefits are denied. A hearing was held on December 24, 2012. The claimant participated. The employer submitted Employer Exhibit 1 as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a part-time collection person from April 18, 2011 to October 17, 2012. The claimant received the employer attendance policy that provides for progressive discipline. It states unscheduled absences (nor previously arranged with department supervisor) that are two in a 30-day period or five in a six-month period are grounds for disciplinary action.

The employer issued claimant verbal warnings in March 2012 and four written warnings from April 13 to October 9 for absenteeism/tardiness. Many of the absences were due to claimant's daughter health issues.

Claimant had some work hour flexibility as to make-up time and working overtime. She was late to work 50 minutes on October 11 but she had come in early before that incident and she believed she had make-up time to cover it. She was later notified the tardiness time had not been pre-approved. On October 16 the claimant was contacted by her landlord that fire trucks were reported at her residence by neighbors. She left work to go home and check-out the fire situation. She missed some scheduled work for this reason.

The employer discharged claimant on October 17 for excessive absences/tardiness.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on October 14, 2012, for excessive "unexcused" absenteeism.

The claimant left work due to a house fire that is a period of absence for an excusable reason and not misconduct. Since this is the most current act relied upon by the employer as for an unexcused absence, job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated October 31, 2012, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on October 17, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css