

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADJO A PASSASH

Claimant

APPEAL NO. 140-UI-01056-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER

Employer

OC: 07/21/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on October 10, 2013. Claimant participated and was represented by Laura Jontz, Attorney at Law. Employer participated through Julie Kilgore, Vice-President of Human Resources and Adam Maus, Director of Environmental Services. A decision was issued on October 11, 2013 denying unemployment insurance benefits to the claimant. The claimant appealed to the Employment Appeal Board (EAB) who remanded for a new hearing after the voice file could not be located. After due notice was issued a hearing was held on February 24, 2014. Claimant participated and was represented by Laura Jontz, Attorney at Law. Employer participated through Julie Kilgore, Vice-President of Human Resources and Adam Maus, Director of Environmental Services.

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 an environment services technician beginning on August 1, 2011 through July 26, 2013 when she was discharged.

The claimant was given a final warning for attendance on June 5, 2013. At that time she was told that any further incidents of tardiness could lead to her discharge. The claimant was late to work on July 2, 2013. The employer's records show she punched in on the time clock at 5:11 p.m. The claimant had fourteen incidents of tardiness and three unexcused full days prior to her discharge. She knew that being tardy to work could lead to her discharge.

Mr. Maus supervises forty-five people. In order to keep track of attendance issues he runs payroll attendance reports after payroll. He was on vacation for one week in July and there was no other supervisor on staff at that time to handle the attendance issue. Mr. Maus ran the

attendance report on July 24 and it was then that he learned of the claimant's incident of tardiness on July 2. It took him only two days after learning of the claimant's tardiness to take action to discharge her. Under these circumstances the employer acted in a reasonably timely manner.

The claimant simply was not credible. She denied ever being late to work, yet the employer's own records kept in the regular course of business show her tardy fourteen times. The claimant indicated that she always punched in at 4:55 p.m., yet the employer's review of 200 working days show only 15 occasions where she punched in at that time. Additionally, the claimant could not offer any explanation as to why she happened to remember what time she clocked in on July 2. The claimant simply was not a credible witness.

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 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).

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

The employer acted within two days of learning of the claimant's most recent incident of tardiness. It is unreasonable to require managers never take vacation or that they examine each employee's time card on a daily basis. The claimant had a long history of being late to work for which she received ample warnings. She knew that her own actions were placing her job in jeopardy. The employer acted only two days after learning of the incident. The claimant was discharged due to a current act of misconduct.

DECISION:

The August 28, 2013, (reference 01) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs