

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN SMITH
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-13731-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
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 December 16, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2017. Claimant participated. Employer participated through Andrea Ahmann, Human Resources Manager and was represented by Keith Mokler, of Corporate Cost Control. 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 part time as a night stock person beginning on August 5, 2016 through November 28, 2016 when she was discharged. The claimant was discharged for excessive unexcused absenteeism. When she was hired the claimant was given a copy of the employer's attendance policy. She was specifically told that if she was going to miss work for any reason the employer expected her to call at least two hours prior to the start time of her shift to let them know she would be absent. This would give the employer time to find a replacement to cover her shift.

On October 22 and 23 the claimant was a no-call / no-show for work. When she returned to work on October 24 the claimant was given and signed a written warning that put her on notice that any future incidents could lead to additional disciplinary action. The warning specifically told the claimant that she was expected to call in two hours prior to the start time of her shift to let the employer know she would not be at work.

Less than one week later the claimant was again a no-call / no-show for two work shifts on October 28 and 29. When she returned to work on October 31 she was given a one week suspension which put her on notice that any further occurrences could lead to her discharge. The claimant was allowed to return to work on November 6, 2016.

The claimant was again a no-call / no-show for two more work shifts on November 25 and 26. Claimant was moving and had to deal with that issue. She never requested time off from the employer so that she could move.

In just over sixteen weeks of employment the claimant was a no-call / no-show for work on six separate occasions. She was given a written warning and then a week long suspension that clearly put her on notice that she needed to follow the employer's policies or she would lose her job.

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 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 absences were not excused. The final absences, in combination with the claimant's history of unexcused absenteeism, are considered excessive. Benefits are denied.

DECISION:

The December 16, 2016, (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/rvs