

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SATASHA J PAUL
Claimant

MID-STEP SERVICES INC
Employer

APPEAL NO. 14A-UI-09074-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/03/14
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 25, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 18, 2014. Claimant participated personally. Employer participated by Karen Scroggin, Administrator. Employer's Exhibits One through Twelve were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 4, 2014.

Employer discharged claimant on August 6, 2014 because of excessive absences. Claimant was warned in writing that she was in violation of employer's attendance policy on December 17, 2013, February 8, 2014, February 27, 2014, March 2, 2014, May 31, 2014, and July 15, 2014.

Employer gave claimant a chance to produce doctor's notes for any of the above dates that might tend to show that her absences should have been excused. Claimant was not able to provide sufficient documentation. Claimant was suspended on July 16, 2014 and was told at that time that her employment would be terminated if she missed work again without providing a doctor's note.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 25, 2014, (reference 01) decision is affirmed. 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.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css