

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY LUCKETT**  
Claimant

**APPEAL NO: 13A-UI-03838-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 02-17-13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 22, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 7, 2013. The claimant participated in the hearing. Connie Gremmer, Human Resources Specialist and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time direct support associate for Mosaic from April 1, 2012 to February 14, 2013. She worked every other weekend and accumulated 16 hours per pay period in addition to whatever shifts she happened to pick up. The employer's attendance policy states that two consecutive no-call no-shows result in termination. The employer allows one call in per month and any absence after that in the month is considered unacceptable.

On October 22, 2012, the claimant received a verbal warning in writing because she was absent October 2, 17 and 22, 2012, and was not available for her mandatory standby shift October 20, 2012 (Employer's Exhibit One). Mandatory standby is a routine assignment where an employee must wait for an hour to see if the employer needs her in case another employee cannot work that date. She is paid for mandatory standby time. On November 27, 2012, the claimant received a written warning because she was not available for her mandatory standby shift November 26, 2012, and had called in on two of her scheduled shifts that month (Employer's Exhibit One). On January 31, 2013, she received a written warning because she called in

January 15, 20, 22 and 28, 2013, and was late January 25, 2013 (Employer's Exhibit One). On February 8, 13 and 14, 2013, the claimant failed to call or show up for her scheduled shifts and the employer terminated her employment February 14, 2013. The claimant did not provide any doctor's notes covering the above listed absences.

**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).

The claimant accumulated 12 absences, one incident of tardiness and two times failed to be available when on mandatory standby, between October 2 and February 14, 2013. Three of her 12 absences were no-call no-shows. These absences were not attributable to illness and the claimant's failure to call or show up for work for her last three absences led to her termination.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final three absences were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The March 22, 2013, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs