

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SUZANNE L ARMSTRONG

Claimant

APPEAL NO: 20A-UI-01178-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 12/15/19

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 25, 2020. The claimant participated in the hearing. Amih Avegnon Sallah, Senior Human Resources Specialist, 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 full-time production specialist for Whirlpool Corporation from October 2, 2018 to January 20, 2020. She was discharged from employment due to a final incident of absenteeism that occurred on January 14, 2020.

The employer uses a no fault attendance policy. Employees are allowed five unpaid personal days and accumulate written warnings for incidents of tardiness or absenteeism after that. A no-call/no-show during the five personal days counts as two days of the five allowed. If they receive three written warnings within a five-month period, their employment may be terminated. The claimant was aware of the employer's attendance policy. 4, 2019, and she called in and reported her absences January 18, 22 and 24, 2019, to use her remaining personal days. She called in January 29, January 30, was a no-call/no-show February 5, called in February 7, February 12, March 7, March 26, May 1, June 20, July 2, July 18, July 25, July 29, August 21, October 10 and October 11, 2019. Her five unpaid personal days started again in November 2019 and the claimant called in November 21, November 22, December 9, December 17 and December 18, 2019. She was a no-call/no-show January 14, 2020, and her employment was terminated for excessive unexcused absenteeism. The claimant testified she asked a friend to fill out a vacation day request form January 14, 2020, but her friend was told

she did not have any vacation left. The claimant showed she had 12 hours of vacation remaining and the employer paid her for eight hours of vacation on her last check.

The claimant received a first written warning March 28, 2019, a second written warning August 27, 2019, and a third written warning October 21, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Not counting vacation days, floating holidays, or tardiness, the claimant was absent on 25 occasions in 2019 alone. Had the employer closely followed its attendance policy she would have been dismissed much earlier than she was. The claimant's last absence was considered a no-call/no-show. While she stated she asked a friend to fill out a vacation slip for her but her friend was told she was out of vacation, had the claimant called the employer to request vacation herself she could have disputed her vacation hours. Instead she relied on a third party to report her absence and when told the claimant did not have any more vacation her friend could not contest the issue. The claimant was warned about her attendance and had used all of her personal days she received in November 2019.

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 absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The February 6, 2020, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn