

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA S TODD**

Claimant

**APPEAL NO. 14A-UI-13371-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**

Employer

**OC: 07/13/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Packers Sanitation Services (employer) appealed a representative's December 15, 2014, decision (reference 03) that concluded Rebecca Todd (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 12, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Eric Jackson, Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 2, 2014, as a full-time laborer. The claimant signed for receipt of the employer's handbook on September 2, 2014. The handbook states an employee is in a probationary period for the first ninety days of employment. During this probationary period, the employee may only be absent five times. After five times, the employee shall be terminated.

The claimant properly reported her absences from employment due to medical issues for which she was hospitalized on October 22, 27, 28, and 29, 2014. She reported her absence for a circumstance on October 24, 2014, that could reasonably be assumed to be related to her medical issues. On November 4, 2014, the employer issued the claimant a verbal warning for her absences and indicated she would be terminated if she were absent again. The claimant properly reported she did not have transportation to work that evening. The claimant was absent on November 4, 2014. The employer terminated her on November 5, 2014.

The claimant filed for unemployment insurance benefits with an effective date of July 13, 2014. The employer attempted to participate at the fact-finding interview on December 12, 2014, by Eric Jackson. The fact finder called the employer at 11:20 p.m. The employer returned the call at 11:25 p.m. and left a message. The fact finder did not call the employer back.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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 misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 had one absence that was related to her personal responsibility. The rest were due to medical issues and properly reported. The latter cannot be considered misconduct. We are left with one absence. One absence is not excessive. The employer has failed to provide any evidence of willful and deliberate misconduct. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's December 15, 2014, decision (reference 03) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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