

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA J MCCOY
Claimant

APPEAL NO. 08A-UI-02291-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VISTA BAKERY INC
Employer

**OC: 04/15/07 R: 04
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 a timely appeal from the February 28, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 24, 2008. Claimant participated. Employer participated through Karen Taylor.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time machine technician from April 22, 2002 until February 6, 2008 when she was discharged. Her last day worked was January 25, 2008 and she called in sick for January 28, 29, and 30, 2008. Employer requires medical documentation to excuse any absence three days or longer. Claimant did not go to the doctor any of those days but called in January 31 to say she was in the hospital for a few hours for detoxification. On February 4 she was a no-call/no-show after being arrested and jailed for driving under the influence of medication. She knew the medication caused drowsiness but drove within two hours after taking it without seeking the advice or consent of a physician or pharmacist. On February 5 claimant was released from jail at 11:30 a.m., her husband called employer in the afternoon to report her absence for the day and employer told him she was suspended and to report for a meeting the next day. She was fired at the meeting on February 6, 2008.

Employer had warned claimant about attendance verbally on December 14, 2007 after she was absent on September 8 for unknown reasons; leaving early on October 29 to deal with her teenagers who were fighting; and for unknown reasons on November 9. She called in sick on November 20. She had also missed work under FMLA in January 2007 for detoxification and that treatment was successful for about a year. Employer had told her that if she missed work for that reason again she may 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.

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).

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 absence was not excused. The absence related to reported illness on November 20 is considered excused. However, since claimant did not provide medical documentation for the three days of absence on January 28, 29 and 30 until after claimant was incarcerated on February 4 that absence is considered unexcused and because she was not suspended until after her husband called to report her absence from work due to incarceration on February 5, even though she had already been released, that absence is unexcused as well. This final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The February 28, 2008, reference 02, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css