

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA A TATRO

Claimant

APPEAL NO. 11A-UI-15124-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAD B STEVENSON DDS PC

Employer

OC: 10/30/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Debra Tatro (claimant) appealed a representative's November 17, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits following her separation from employment with Chad Stevenson (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 26, 2012. The claimant participated personally and through her husband, Michael Tatro, and former co-worker, Michele Hews. The employer participated by Chad Stevenson, Owner. The Employer offered and Exhibits One, Two, and Three were 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 in February 1992, as a full-time business assistant. The employer did not have a handbook. The employer had discussions with the claimant regarding attendance and performance on September 30, October 3, 6, and 7, 2011. On October 13, 2011, the employer told the claimant her job was at risk. The claimant indicated that she knew this fact.

The claimant indicated a desire to the employer that she wanted to move back to Vermont with her family. On October 18, 2011, the claimant called and said she would be in by noon but did not appear until 12:30 p.m. The employer talked to the claimant about her position and that she would be terminated for any further absences.

On October 20, 2011, the claimant presented a letter of resignation indicating she was going to quit by March 31, 2012. On October 23, 2011, the claimant called the employer at home and said she was having problems finding transportation from Iowa City, Iowa, to work the following day. On October 24, 2011, the claimant was 33 minutes late for work due to transportation issues. When she arrived the claimant wanted to gather the staff and tell them all that the employer was not treating her well. The employer refused the claimant's request and the

claimant walked out. The employer would have terminated the claimant for repeated absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 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 final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's November 17, 2011 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs