

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M DESTIVAL

Claimant

APPEAL 19A-UI-06011-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES

Employer

OC: 06/30/19

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.4-1 – Able and Available

STATEMENT OF THE CASE:

Angela Destival (claimant) appealed a representative's July 22, 2019, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after the claimant's separation from work with Winnebago Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2019. The claimant participated personally. The employer participated by Susan Gardner, Human Resources Supervisor, and Joel Ostercamp, Production Supervisor Two. The employer offered and Exhibit 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 October 24, 2016, as a full-time production assembler working 6:00 a.m. to 2:30 p.m. or later. She signed for receipt of the employer's handbook on October 21, 2016.

The handbook indicated that employees must report absences within one hour of the start of their shift. The employer's progressive attendance policy stated that it could issue a verbal warning, a written warning, and a suspension, before termination. If an employee was absent eighty-eight hours or more during a continuous twelve-month period, the employer could consider termination. The employer could skip steps for employees who are habitually absent. On March 20, 2019, the employer issued the claimant a verbal warning when she was at 76.4 hours of absence for the year. She was absent on March 15 and 18, 2019, for unknown reasons.

The claimant requested and was granted Family Medical Leave (FMLA) from May 8 to June 5, 2019. She was released to return to work on June 6, 2019. On June 11, 12, 13, and 14, 2019, the claimant did not feel well enough to return to work. She did not return to her physician because he said he could not find the reason she did not feel well. On June 17, 2019, the employer issued the claimant a written warning and a final warning notice for her absences

On June 20, 2019, the claimant did not report her absence from work to the employer. She told a co-worker that she had no transportation. On June 21, 2019, the claimant called the employer at 9:42 a.m. to report her absence from her 6:00 a.m. shift. Her four-year-old son had an ear infection. On Monday, June 24, 2019, the claimant called the employer at 12:11 p.m. to report her absence from her 6:00 a.m. shift. She was sick.

On June 25, 2019, the claimant did not report her absence from work to the employer. On June 26, 2019, the claimant called the employer at 12:31 p.m. and reported she "would not be in today". On June 27, 2019, the claimant did not appear for her shift until 10:45 a.m. She told the production supervisor that she came in to see if she still had a job.

The production supervisor took the claimant to the human resources supervisor. When asked about her absences, the claimant told the two supervisors that her son was sick one day and she "had a lot going on". The employer terminated the claimant on June 27, 2019, for excessive absenteeism.

Even though the claimant was released to return to work, she does not feel well enough to perform work. She feels she is not able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as

is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

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.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant considers herself too ill to work. She is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits due to her inability for work.

DECISION:

The representative's July 22, 2019, 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.

The claimant is disqualified from receiving unemployment insurance benefits due to her inability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs