

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SANDRA R SWANBERG
3053 – 250TH ST
ROCKWELL CITY IA 50579-7506

TRINITY REGIONAL MEDICAL CENTER
ATTN TED VAUGHN
802 KENYON RD
FORT DODGE IA 50501

Appeal Number: 06A-UI-03180-AT
OC: 02/26/06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Sandra R. Swanberg filed a timely appeal from an unemployment insurance decision dated March 10, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held on April 6, 2006, with Ms. Swanberg participating. Ted Vaughn, Garry Gillis and Terry Daly participated for the employer. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sandra R. Swanberg was employed by Trinity Regional Medical Center from October 2, 2001 until she was discharged February 23, 2006 for poor attendance. She last worked as an environmental services technician. Ms. Swanberg overslept on February 23, 2006. She was tardy a total of 29 times between January 3, 2003 and her discharge. Her attendance was addressed in evaluations in 2001, 2002 and 2004. She also received oral and written warnings and a suspension all because of her attendance. While the employer's policy enables a supervisor to excuse an instance of tardiness, it does not require that the supervisor do so, even if the employee makes up the time. Ms. Swanberg was aware that she was being disciplined for instances in which she had made up her time.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility are considered unexcused whether or not the employee properly reports the incident to the employer. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). On the other hand, absence due to medical conditions properly reported to the employer are not held against any individual for unemployment insurance purposes. See 871 IAC 24.32(7).

The evidence in this record establishes 29 occurrences of tardiness dating back to 2003. This number of occurrences when viewed in the context of repeated warnings and other discipline is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

The claimant argued that the incidents should not be counted because she made up the time. The greater weight of evidence, however, establishes that the claimant was aware that the employer was not approving her tardiness even in those instances.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

cs/tjc