

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUINN C HEIDTBRINK
Claimant

APPEAL NO. 07A-UI-10657-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HART FAMILY DENTISTRY PC
Employer

**OC: 10/14/07 R: 03
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 13, 2007, reference 01, decision that allowed benefits for the notice period ending October 27, and denied benefits thereafter. After due notice was issued, a telephone conference hearing was held on December 13, 2007. Claimant participated. Employer participated through Kevin Hart.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer, if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, and if so, whether she is overpaid benefits as a result.

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 dental assistant from September 2006 until October 16, 2007 when she gave her notice of intention to resign without a specific effective date. Employer elected October 25, 2007 as the tentative separation date and planned to have her stay to help train the new assistant whom he hired to start on October 23, 2007. She moved November 3, 2007. Employer fired her before the notice period expired because of a final absence due to searching for work on October 15, 2007. She left a message the night before but had not arranged permission in advance. She had been warned on July 11 due to tardiness in reporting to work and from lunch. She was also absent during the morning of July 9, 2007 from 7 a.m. to 8:40 a.m. for medical treatments for nine weeks from 9 a.m. to 11 a.m. on Mondays, Tuesdays, and Thursdays. She was also tardy each work day between June 13 and July 11, 2007. She was not scheduled on Fridays at all or on Tuesday or Thursday mornings until 11 a.m. She was also tardy multiple times between July 11 and September 5, 2007 because of getting her child ready in the morning. She was also tardy between September 5 and October 15 including September 5 (10 minutes), September 15 (2 minutes),

September 17 (21 minutes), September 19 (7 minutes late), September 26 (10 minutes late), October 1 (19 minutes late), and October 10 (6 minutes tardy).

The claimant has received unemployment benefits since filing a claim with an effective date of October 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant intended to voluntarily leave her employment but was discharged from employment due to job-related misconduct before the expiration of the resignation notice period.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(2) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

While claimant's decision to quit to move to another area was based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving. Benefits must be denied.

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 to search for work was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 13, 2007, reference 01, decision is modified in favor of the appellant. The claimant quit to move and was discharged from employment due to excessive, unexcused

absenteeism prior to the resignation effective date. 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. The claimant is overpaid benefits in the amount of \$406.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs