

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**QIANA S GREEN**

Claimant

**APPEAL NO. 15A-UI-11927-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**

Employer

**OC: 12/21/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Qiana Green (claimant) appealed a representative's October 16, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Whirlpool Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 12, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**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 January 7, 2014, as a full-time assembly worker. At the time she was hired the employer told her she would have time to take off three days for her wedding. The claimant received the employer's handbook. The employer's handbook indicates that court dates are excused.

In July 2014, the employer issued the claimant a written warning for properly reporting her absence due to a blizzard when no one appeared for work and taking her three days off for her wedding. Later she received a written warning for properly reporting her absences due to her own illness and taking her daughter to the emergency room. The employer notified the claimant that further infractions could result in termination from employment. On October 22, 2015, the claimant properly reported her absence due her daughter's illness. The employer terminated her on October 24, 2015.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

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). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The claimant's absences due to properly reported illness or taking her daughter to the emergency room cannot be considered misconduct. The absences for the court dates and her wedding were excused or pre-approved and were not misconduct. That leaves the absences for the blizzard and the sick child. The claimant testified that no employee appeared for work on the day of the blizzard. The employer did not appear for the hearing to answer the question of whether there was work available for the claimant on the day of the blizzard if no other employees were working. One or two absences are not excessive. The employer did not participate in the hearing and, therefore, provided insufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's October 16, 2015, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs