

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEREDITH A HUFF
Claimant

SLB OF IOWA LC
Employer

APPEAL 15A-UI-04622-KC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 9, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2015. The claimant participated. The employer participated through human resources manager, Karen Beard, who served as the employer's representative and witness.

ISSUES:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant manager beginning March 12, 2012. She last worked on March 8, 2015. She was separated from employment on March 9, 2015.

The claimant received two written warnings in early 2015 regarding attendance. Both notices indicated that she could face further disciplinary action, up to and including termination. She was warned about attendance on February 24, 2015, due to her failure to call or report to work her scheduled shift on February 23, 2015. The employer requires employees to call in two hours in advance. On March 2, 2015, she received a written warning about her failure to report an absence two hours before her shift on February 28, 2015. On that date, the claimant went to local medical clinic with knee pain. She called the employer approximately two hours before her shift to report that she was at a medical center. The medical center staff then referred her to an emergency room regarding what was later found to be a torn ligament. She was unable to work that day.

On March 8, 2015, the claimant did not attend the new menu meeting called a “bread bash,” which is a required meeting for staff and occurred after the restaurant closed. Managers do not always attend each of the new menu meetings. She testified that she chose not to attend. The claimant informed her supervisor she would not attend the meeting because she was not feeling well. Thereafter, Morrill sent the claimant a text indicating that it was not a good idea to miss the meeting.

On March 9, 2015, the claimant did not appear for her shift and called shortly before her shift start time. She called Mike Young, Operations Manager, and requested a transfer to another Panera restaurant in the Quad Cities. She indicated that she had difficulty working with General Manager Sarah Morrill. She felt berated by Morrill’s e-mails. She did not tell the employer that she intended to resign. Young indicated he would talk to Beard about a possible transfer. Beard spoke with the claimant that morning. Beard and Young decided, based on the claimant’s failure to appear at two successive shifts and her history of disciplinary actions, she would not be transferred to another location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work.

The claimant's absence on February 28, 2015 is not an unexcused absence for the purposes of this claim. She was, however, aware that her previous unexcused absence put her job in jeopardy.

The claimant provided inconsistent testimony about why she missed a required menu meeting on March 8, 2015. Initially, she testified that she chose not to attend. Later, she testified that she was ill, however, she had not been ill during her shift that day. Regardless of the reason, she did not attend the scheduled meeting despite her supervisor's directive to attend. The next day, she was late to inform her employer that she would not work her March 9, 2015 shift. She did not resign her position. She requested a transfer.

The employer terminated her employment based on her history of unexcused absences and reported inability to work with her direct supervisor. The claimant knew that her history of absences put her job in jeopardy. She had two unexcused absences prior to termination. She also told a manager, who was in the position to address her concerns, that she could not work with her direct supervisor.

The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 9, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs