

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTIONETTE SINGLETON

Claimant

APPEAL NO: 12A-UI-09400-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESIDENTIAL ALTERNATIVES OF IOWA

Employer

OC: 06-24-10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 24, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2012. The claimant participated in the hearing. Kyle Kruckenberg, Assistant Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cook for Windmill Manor from January 6, 2009 to June 25, 2012. She was discharged from employment due to a final incident of absenteeism that occurred on June 25, 2012. The claimant had received previous verbal warnings about her tardiness from her supervisor prior to May 3, 2012. On that date the claimant was scheduled at 3:00 p.m. and arrived at 3:45 p.m. and received a written warning. The claimant was late because she was moving and tried to call off but was told by her supervisor to come in when she could. She does not recall receiving the written warning. On May 5, 2012, the claimant was scheduled at 5:00 a.m. and arrived at 5:26 a.m. The employer did not take any disciplinary action against the claimant following that incident of tardiness and the claimant does not recall why she was late. On May 6, 2012, the claimant was scheduled at 11:30 a.m. and arrived at 11:47 a.m. and the employer issued her a second written warning regarding her tardiness. The claimant was tardy because her ride was slow in taking her to work. On May 18, 2012, the claimant's shift was scheduled to end at 7:30 p.m. She was talking to the nurse, who was her ride home, and failed to clock out until 8:30 p.m. The employer issued her a written warning for dishonesty in staying past the scheduled end of her shift without supervisor approval. The claimant stated she was not sure she clocked out at 7:30 p.m. so she clocked out again at 8:30 p.m. assuming she could fix it the next day. The employer told the claimant at that time that any further attendance issues in the following six months would result in her termination

and the claimant was aware her job was in jeopardy. On June 25, 2012, the claimant was scheduled to work 11:30 a.m. to 7:30 p.m. She called her supervisor to say she would be late because her landlord was going to conduct an inspection of her apartment and she would be in by 1:00 p.m. She arrived at 1:26 p.m. and because she had received a final written warning May 18, 2012, her employment was terminated. The claimant did not try to reschedule her appointment with her landlord even though she knew another incident of tardiness would result in termination. There is no evidence that these absences were related to illness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

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). The claimant was tardy on five occasions between May 5, 2012 and June 25, 2012. Despite receiving three warnings between May 5 and May 18, 2012, and being told another incident of tardiness within the next six months would result in termination, the claimant failed to reschedule a meeting with her landlord to a time outside of her scheduled work hours; something when asked about during the hearing she said she could have done. There was nothing preventing her from doing so but the claimant decided to proceed with the meeting with her landlord and consequently accumulate another, and final, incident of tardiness, even though she knew her job was in jeopardy. The claimant had a responsibility to the employer to be on time and five incidents of tardiness in a 7 and ½ week period is excessive. 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 absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The July 24, 2012, reference 03, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs