

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAN MANNING
Claimant

APPEAL NO: 12A-UI-14607-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 10/28/12
Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Jan Manning (claimant) appealed an unemployment insurance decision dated November 28, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from WesleyLife (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on February 11, 2013. The claimant participated in the hearing. The employer participated through Samantha Cumings, Housekeeping Supervisor; Nancy Webb, Director of People and Culture; and David Williams, Employer Representative. Employer's Exhibits One through Three were admitted into evidence. This hearing was held simultaneously with Appeal Number 12A-UI-14608-BT. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 as a part-time resident assistant on April 12, 2011 and was most recently working as a laundry assistant when she was discharged on October 30, 2012 for repeated tardiness. The employer's handbook provides that tardiness is considered arriving to work any time after the scheduled start time or returning to work late after a scheduled break. Three incidents of tardiness within a three-month period may result in disciplinary action. If an employee is going to be late, he or she must contact their supervisor.

Samantha Cumings became the claimant's supervisor in July 2012 and she counseled the claimant on August 22, 2012 as to her repeated tardiness. The claimant contends Ms. Cumings merely questioned her as to why she was repeatedly late. The claimant received a final written warning on September 24, 2012 which placed her on notice that continued tardiness would not

be tolerated. The warning resulted from the claimant's tardiness on July 22; August 5, 11, 12, 18, 19, 22, 23, 25, 26; September 2, 8, 9, 16, 22 and 23. The warning advised the claimant that further incidents of not arriving to work on time and not giving proper notice of tardiness would result in termination. The claimant was discharged after she was late for work on October 21, 2012 and failed to notify her supervisor she was going to be late.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 30, 2012 for 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. 871 IAC 24.32(7).

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 contends that her previous supervisor tolerated her tardiness but the evidence confirms she was placed on notice that continued tardiness was no longer going to be tolerated. 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. Benefits are denied.

DECISION:

The unemployment insurance decision dated November 28, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css