

not know she was supposed to work that day. The schedule was posted without change two weeks prior to the scheduled workday but claimant did not verify her schedule even though she had schedule variations approximately two months prior.

On August 29 employer warned her in writing and suspended her for seven days (from September 7 through September 13) for her absence on Saturday, August 27; also a no call-no show because she did know she was scheduled. Another written warning was issued on August 29 for the August 24 tardiness (two hours after her shift started) in reporting her absence because her son was at the hospital and for leaving early the same day because she thought her shift ended earlier than it did but did not check the schedule. While employer did not provide copies of the warnings, claimant did not read them before signing nor did she request copies.

The claimant has received unemployment benefits since filing a claim with an effective date of September 11, 2005.

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 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Given the circumstances, claimant's late report of her absence on August 24 was excused, but leaving early without verifying the schedule was not. The employer has established claimant was warned that further unexcused absences (non-compliance with the posted schedule) could result in termination of employment and the final absence was not excused. Thus, the final absence, in combination with the

claimant's history of unexcused absenteeism, is considered excessive and is disqualifying. Benefits are withheld.

Iowa Code Section 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 September 29, 2005, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$525.00.

dml/s