

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A AJUOGA
Claimant

APPEAL NO. 11A-UI-13541-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 09/11/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the October 7, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 7, 2011. Claimant participated and was represented by the union representative Helena Edmundson. Employer participated through Sales Manager Jason Jones and was represented by Steve Zaks of Barnett Associates Inc. Employer's Exhibit 1 (fax pages 1 – 36) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative and was separated from employment on September 13, 2011. She was tardy on September 12, 2011 for her 8:30 a.m. shift when she logged in at 8:35:18 a.m., after the five-minute leeway. She was in the office at 8:30 a.m. but the system took that long to boot up and allow her to log on. It showed her as being logged on by 8:35 a.m. (Employer's Exhibit 1, fax page 3) She was absent on September 2, 2011. She was most recently warned on August 10, 2011. She was warned in writing on November 12, 2010; December 2, 2010; April 13, 2011; and July 12, 2011. On August 8 and 9, 2011 she was absent due to illness, November 30, 2010 grandmother had a stroke, November 10 and 11, 2010 illness. She was tardy on August 3 and 1, July 12, May 26, April 12, 2011, and November 19, 2010. She offered medical documentation, but it was not accepted. Her tardiness on one of those days was related to transportation issues but does not recall other reasons for the alleged tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Since the final incident of tardiness for which she was discharged was related to a delayed log-on process, no current act of misconduct has been established. Benefits are allowed.

DECISION:

The October 7, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw