

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE A BRANDENBURG
Claimant

APPEAL NO. 10A-UI-14704-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOTEL JULIEN DUBUQUE
Employer

OC: 09/12/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michelle Brandenburg filed an appeal from a representative's decision dated October 13, 2010, reference 01, which denied benefits based on her separation from Hotel Julien Dubuque. After due notice was issued, a hearing was held by telephone on December 13, 2010. Ms. Brandenburg participated personally. The employer participated by Carol Freihage, Restaurant Manager.

ISSUE:

At issue in this matter is whether Ms. Brandenburg was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brandenburg began working for Hotel Julien Dubuque on November 18, 2009. She worked from 20 to 23 hours each week as a food server. She was discharged because of her attendance.

Ms. Brandenburg was late reporting to work on 18 separate occasions from February 21 through August 15. Her reasons for being late included "running late," waiting for child care provider, and waiting for a ride. She was verbally warned about her attendance. She was absent March 22, 23, and 24 because she was arrested and confined to jail. She was also in jail from August 9 through 13 but made arrangements in advance to have the time off from work. She was absent for unknown reasons on June 3, June 9, and August 26. Ms. Brandenburg was absent without calling in on September 6. She was absent because she did not have transportation and did not call because her cell phone was not working. She received a written warning on September 7.

The decision to discharge Ms. Brandenburg was due to her absences beginning September 14. She was picked up on a warrant on the morning of September 14 to serve a seven-day jail sentence. Neither she nor anyone acting on her behalf contacted the employer on September 14. Although she had told her manager she would need to serve jail time, she had not notified the manager of the specific dates the time was to be served. The employer did not

learn until three days later that Ms. Brandenburg was in jail. She was released on September 22 and met with the employer on September 23. She was told at that time that she no longer had employment. Due to her incarceration, she missed work on September 14, 15, 17, 18 and 19.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

For reasons that follow, the administrative law judge concludes that excessive unexcused absenteeism has been established. Ms. Brandenburg was late 18 times during a period of approximately seven months. The evidence of record does not establish any reasonable cause for the tardiness. From March 23 until the time of separation, she missed work on eight occasions due to incarceration. She was absent without notice due to lack of transportation on September 6. There were other absences that were for unknown reasons. Because the reasons are unknown, the administrative law judge cannot conclude that they are unexcused.

Absences caused by matters of purely personal responsibility, such as transportation, child care, and incarceration, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Therefore, Ms. Brandenburg's tardiness and absences due to waiting for child care, waiting for a ride, and being in jail are all unexcused. All of the attendance infractions were during the seven-month period beginning February 21, 2010. A total of 27 periods of unexcused absenteeism occurred during this period. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated October 13, 2010, reference 01, is hereby affirmed. Ms. Brandenburg was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs