

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN L AYALA-ZEPEDA**  
Claimant

**APPEAL NO. 16A-UI-06486-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

**OC: 06/28/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated June 6, 2016, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work on May 20, 2016 for excessive, unexcused absenteeism after being warned. After due notice was provided, a telephone hearing was held on June 29, 2016. Claimant participated. The employer participated by Mr. Ronald Udell, Human Resource Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Karen Ayala-Zepeda was employed by IAC Iowa City LLC from September 12, 2014, until May 20, 2016 when she was discharged for excessive, unexcused absenteeism. Ms. Ayala-Zepeda was employed as a full-time injection operator and was paid by the hour.

The claimant was discharged on May 20, 2016 after she exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance point policy.

Under the terms of the policy, employees are subject to discharge if they "zero out" on attendance points by being excessively absent or tardy or failing to notify the employer of impending absences. Company employees are expected to track their own attendance points, however, the employer sends out notices of point standings to employees twice per year. The employer also endeavors to warn employees when they reach a level of 30 points, 10 points and at 0 points.

Ms. Ayala-Zepeda had been absent from work due to the birth of her baby and had been given protection under the Family Medical Leave Act until April 24, 2015 when she had been released

to return to work. Although the claimant had been released to return to work, Ms. Ayala-Zepeda repeatedly called off work because she did not have sufficient child care arrangements made to care for her newborn and other children between 11:00 p.m. when she began her work shift and approximately 2:30 a.m. when the father of the claimant's children finished his work shift.

Because the claimant was repeatedly absent from work due to lack of child care, she was not present to receive notification on May 5, 2016 that she was near "zeroing out" on her attendance infraction points.

In an effort to retain the claimant as an employee, the employer granted Ms. Ayala-Zepeda 12 additional attendance points on or about May 6, 2016, however, the claimant continued to call off work. On May 9, 2016, the claimant called off work due to a lack of child care. On May 11, the claimant was absent but failed to notify the employer. On May 13, the claimant was absent because her son was ill. On May 16, the claimant was absent due to lack of a babysitter. The claimant's most recent attendance infraction took place on May 19, 2016 when she reported to work late because she could not make sufficient child care arrangements.

#### **REASONING AND CONCLUSIONS OF LAW:**

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibility such as transportation, oversleeping or child care are considered unexcused. Absences related to illness are considered excused provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant had been absent from work on numerous occasions due to lack of child care. The claimant began her work shift at 11:00 p.m. and the father of the claimant's children had accepted employment which did not end each night until approximately 2:30 a.m. leaving a substantial period of time during which the claimant's newborn and other children needed care and supervision on a regular basis.

The claimant and other workers were expected to keep track of their attendance violations and the accompanying infraction points that were being assessed and the employer twice per year sent notices to employees informing them of their point level status. Because of lack of child care the claimant had been repetitively absent and the employer was unable to inform her that she had utilized all attendance infraction points as of approximately May 5, 2016. Nevertheless, the employer granted the claimant 12 additional points in an effort to keep Ms. Ayala-Zepeda employed, however, the claimant continued to be absent due to lack of child care causing her

unexcused absences to be excessive and resulting in her termination from employment. The final incident that caused the claimant's discharge took place on or about May 19, 2016 when she reported to work late because she had not made sufficient arrangements for child care.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Ms. Ayala-Zepeda was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

**DECISION:**

The representative's decision dated June 6, 2016, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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