

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELINA MARTINEZ

Claimant

APPEAL NO: 12A-UI-12051-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 09-02-12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 25, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 5, 2012. The claimant participated in the hearing. Candace Allgood, Supervisor and Turkessa Newsone, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for APAC Customer Services from November 15, 2010 to September 6, 2012. She was discharged from employment due to a final incident of absenteeism that occurred September 6, 2012. The employer's new attendance policy went into effect April 16, 2012. The employer uses a point based, no fault attendance policy and allows employees five points within a rolling calendar year. Points drop off after one month of perfect attendance or after six months from the occurrence.

The claimant was three hours tardy May 2, 2012, after suffering a seizure and received one point; she was 22 minutes tardy May 3, 2012, and received one-half point; she was 15 minutes tardy May 4, 2012, and received one-half point; the employer sent her home six hours early May 10, 2012, because she had fallen before work but did not want to gain an attendance point and was in tears due to an injury to her hand and received one-point; she was 18 minutes tardy May 17, 2012, and received one-half point; she was nine minutes tardy May 22, 2012, and received one-half point; she was absent July 2, 2012, and received one point; she was six minutes tardy August 29, 2012, and received one-half point; and was six minutes tardy September 9, 2012, and received one-half point at which time her employment was terminated for violating the employer's attendance policy.

The claimant received a verbal warning in writing May 2, 2012, for accumulating one point; a written warning May 8, 2012, for accumulating a total of two points; a final written warning May 30, 2012, for accumulating a total of four and one-half points; and a reinforced final written warning July 3, 2012, for accumulating five and one-half points.

When the employer changed its attendance policy April 16, 2012, it sent a memo to employees explaining the new policy. The claimant understood the policy with the exception of the portion regarding how points are dropped. She did not have any recordable absences in June and thus believed one point should have been deducted from her total. The employer allows a tardiness grace period of five minutes. The claimant used the grace period five times in June but because it was a grace period she did not understand she would still be punished for those dates and did not realize she did not lose a point as a result of her use of the grace period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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).

According to the employer's testimony, the claimant received a verbal warning in writing May 2, 2012, for accumulating one point; a written warning May 8, 2012, for accumulating a total of two points; a final written warning May 30, 2012, for accumulating a total of four and one-half points; a reinforced final written warning July 3, 2012, for accumulating five and one-half points and had six and one-half points at the time of termination. The actual totals should be one point for the verbal warning in writing; two points total for the written warning; four points total for the final written warning; five points total for the reinforced final written warning; and six points total at the time of termination. The claimant did not lose a point in June 2012 even though she did not

have any recordable incidents of absenteeism or tardiness. It seems contradictory to allow a grace period and then punish an employee for using it. If not for that, the claimant would have dropped a point and been at five points at the time of her discharge which would not have resulted in her termination.

The claimant had six incidents of tardiness resulting in one-half point each between May 2 and September 6, 2012, the last two of which were six minutes each, one minute past the grace period, and the longest one being 22 minutes in length. Two of her remaining three points were due to properly reported illness. Under these circumstances, the administrative law judge must conclude that the claimant's three points for tardiness, not counting the absences due to properly reported illness, do not rise to the level of excessive, unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 25, 2012, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css