

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHERINE S EDSILL**

Claimant

**APPEAL NO. 12A-UI-07610-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMFORT CARE MEDICARE INC**

Employer

**OC: 07/24/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Katherine Edsill (claimant) appealed a representative's June 15, 2012 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Comfort Care Medicare (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 18, 2012. The claimant participated personally. The employer participated by Jennifer Ostlie, Nursing Coordinator. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 7, 2011, as a full-time visit nurse. The claimant signed for receipt of the employer's handbook on October 7, 2011. The claimant does not remember receiving the handbook. The employer issued the claimant written warnings on February 28 and April 10, 2012, for tardiness without notice to the employer. The employer notified the claimant that further infractions could result in termination from employment. The claimant was tardy 32 times during her employment. On May 21, 2012, the claimant overslept and was tardy. The employer terminated the claimant on May 25, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was not restricted from working by her physician. She is considered to be available for work because her physician did not restrict her from working. The claimant is able and available for work.

**DECISION:**

The representative's June 15, 2012 decision (reference 03) is affirmed. The claimant is not qualified to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able and available for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs