

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMMA N ALAS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 17A-UI-08498-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/30/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 16, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 6, 2017. Claimant participated. CTS Language Link interpreter ID number 9844 interpreted on claimant's behalf. Employer participated through human resources manager Chelsea Cornelius.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a section trim employee from August 22, 2006, and was separated from employment on July 25, 2017, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points in a rolling twelve month period. The employer requires employees contact the employer and report their absence at least thirty minutes prior to the start of their shift. Claimant was aware of the employer's policy.

Around July 5, 2017, claimant requested to take time off from July 8, 2017 through July 29, 2017 and would return to work on July 31, 2017. Claimant told the employer she needed to take the time off to travel out of the country because her father was in the hospital. The employer did not approve claimant's time off request. Claimant did not have any available vacation or sick time to cover her time off request. The employer offered to let claimant quit. Claimant did not accept the employer's offer to quit.

Claimant was absent from July 8, 2017 through July 25, 2017. Claimant was absent from her scheduled shifts on: July 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 24, and 25, 2017.

Claimant properly reported her absences, except for July 20 and 24, 2017. Claimant was a no-call/no-show for July 20 and 24, 2017. The employer sent claimant a letter in the mail on July 26, 2017 informing her she was discharged. Claimant returned to the United States on July 29, 2017. Claimant called the employer on July 31, 2017 and offered to return to work, but the employer told her she was discharged. Claimant was last warned on December 22, 2016, that she faced termination from employment upon another incident of unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer's attendance policies, which determines whether absences are excused or unexcused. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 557-58 (Iowa Ct. App. 2007).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Although the employer denied claimant's request for time off, she was absent from her fourteen scheduled shifts from July 8, 2017 through July 25, 2017. While claimant's desire to be with her father in the hospital may have been for good personal reasons, it was not due to her illness or injury and therefore her absences are considered unexcused. The employer has established that claimant was warned that further unexcused absences could result in termination of employment and her final absences were not excused. Claimant's final absences, in combination with her history of unexcused absenteeism, are considered excessive. Benefits are withheld.

DECISION:

The August 16, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs