

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRA MARADIAGA
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 17A-UI-03982-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2017. Claimant participated. CTS Language Link interpreter ID number 6866 interpreted on claimant's behalf. Employer participated through human resource specialist Rosa Frausto and production supervisor Jose Daniel Carrasco. Official notice was taken of the administrative record, including claimant's continued claims filing history, with no objection.

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 J-cutter from July 7, 2014, and was separated from employment on March 17, 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 eight points in a rolling twelve month period. The employer requires employees contact the employer and report their absence at least two hours prior to the start of their shift. Claimant was aware of the employer's policy.

The final incident occurred when claimant was a no-call/no-show on March 8, 2017. The employer did not try to contact claimant on March 8, 2017. Claimant received three points for her no-call/no-show on March 8, 2017, which gave her a total of 9.5 points. Claimant was next scheduled to work on March 10, 2017. Claimant reported to work on March 10, 2017. On March 10, 2017, the employer asked claimant why she was a no-call/no-show on March 8, 2017. Claimant told the employer she thought she had vacation time scheduled for March 8, 2017. Claimant testified she had submitted her vacation request a couple weeks prior to

March 8, 2017 and later got confused as to what days were approved. Claimant was not approved for vacation on March 8, 2017. The employer had only approved claimant's request for vacation for March 9 and 10, 2017. Claimant asked if she would be discharged that day (March 10, 2017) and Mr. Daniel Carrasco told her he had to wait for the proper paperwork to determine if she would be discharged. Claimant was then discharged on March 17, 2017.

Claimant was last warned (written warning) on February 23, 2017, that she had 5.5 attendance points. Claimant was reminded that if she reached eight points she would be discharged. Claimant was also issued written warnings for her attendance infractions on August 5, 2016 for having 5.5 attendance points, on June 17, 2017 for having seven points, and on January 21, 2016 for having four points. Since August 18, 2016, claimant was absent, tardy, and left early on: March 8, 2017 (no-call/no-show); March 2, 2017 (absent, husband's doctor appointment); February 23, 2017 (tardy, woke up late); February 16, 2017 (absent, personal reason); February 3, 2017 (left early); January 26, 2017 (absent, no babysitter); January 1, 2017 (left early, tooth pain); December 21, 2016 (left early) December 16, 2016 (absent, no babysitter); December 15, 2016 (absent, no babysitter); and August 18, 2016 (left early, sick child).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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. The employer has established that claimant was warned that further unexcused absences could result in termination of employment and the final absence on March 8, 2017 was not excused. Claimant was a no-call/no-show on March 8, 2017. Although claimant mistakenly thought she had an approved vacation on March 8, 2017, the employer presented credible evidence that she had not been approved for vacation on March 8, 2017. Claimant's final absence, in combination with her history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 7, 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