

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER TORREZ
Claimant

APPEAL NO: 13A-UI-12639-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHORT STAFFED INC
Employer

**OC: 10/13/13
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 6, 2013, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 5, 2013. The claimant participated in the hearing. Julie Klein, Office Manager, 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 garbage hopper for Short Staffed last assigned to City Wide from May 3, 2013 to July 5, 2013. He was discharged from employment due to a final incident of absenteeism that occurred on July 5, 2013.

The claimant called in and reported he was ill and would not be at work May 20, 2013. He called in to report he needed a personal day due to problems with his daughter and her failure to come home the night before to care for her child the claimant was left alone with the one-year-old and could not obtain childcare before or during his scheduled shift.

The claimant worked with City Wide through a different temporary staffing agency before City Wide changed staffing companies and went with Short Staffed. The employer does not know his hire date with the previous staffing company but the claimant worked there for at least one year prior to starting with the new agency. While there he accumulated six prior absences and one incident of tardiness. Three of those absences were due to illness; one was due to injury; and two were due to not having childcare for his grandson. The incident of tardiness was also due to lack of childcare. Short Staffed was not aware of the claimant's previous absences until after City Wide asked it to release him July 5, 2013. There is no evidence the claimant was ever warned about his absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

While the claimant had previous absences with the prior staffing agency while assigned to City Wide, he only had two absences during his tenure with City Wide. The first was due to properly reported illness and is considered excused under the law. The second was due to lack of childcare, which is not considered excused under the law. The standard, however, is excessive unexcused absenteeism. (Emphasis added). The claimant had two absences while with this employer and only one of those was unexcused. Under these circumstances, the administrative law judge must conclude the claimant's absences do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The November 6, 2013, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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