

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA K NEELY
Claimant

APPEAL NO. 07A-UI-05738-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST OFFICE TECHNOLOGY INC
Employer

OC: 05-13-07 R: 02
Claimant: Appellant (1)

871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 1, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 26, 2007. The claimant did participate. The employer did participate through Becky Wittry, Administrative Manager and (representative) Ken Hickman, Administrative Manager.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an accounts payable clerk, back-up dispatcher and collector full time beginning April 17, 2002 through April 23, 2007 when she was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on April 23, 2007. The claimant was last warned on April 4, 2007, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on March 12, 13, 14, 15, and 16 in addition to others earlier in the year.

The claimant was a no call-no show to work during some days of the week when she was absent in March. When she returned to work on March 19 Mr. Hickman spoke to the claimant and specifically told her that it was important for her to call in or to have someone call on her behalf to report that she would be absent. This allowed the employer to cover her job duties and prevented them from worrying because they had not heard from her. The claimant was discharged not because she was ill and unable to come to work, but because she did not properly report her absence on April 23, 2007. When the claimant called in on April 24, 2007 she said to Mr. Hickman that she assumed she was discharged because she had not called in to report her absence nor had her husband called in to report her absence on April 23, 2007.

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 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). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

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 claimant had the ability to ask her husband to call in for her on April 23, indicating that she knew that timely reporting of her absence was necessary. The claimant had the ability to ask her husband indicating she could have called and left a message herself on the employer's answering machine. Because the claimant failed to properly report her absence on April 23, it is not considered excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 1, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time

as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs