

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEACHA A CROCKER
Claimant

FERRARA CANDY COMPANY
Employer

APPEAL 15A-UI-07204-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 15, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2015. The claimant participated personally. The employer participated through Robin Travis. Employer Exhibit One was admitted into evidence.

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: The claimant was employed full-time as a packer and was separated from employment on June 1, 2015, when she was discharged for excessive unexcused absenteeism after prior warning.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. Points can be reduced with doctor's documentation. 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 12-month period. The claimant was made aware of the employer's policy at the time of hire.

The claimant had 7.5 points when she last worked Friday, May 29, 2015. The claimant no-call/no-showed on Saturday, May 30, 2015, which caused her to "point out." Employees were required to work some Saturdays, and the claimant was posted that Saturday was expected to be worked by the employees. The claimant had a doctor's note requesting she not work more than 40 hours, and the employer accommodated the request. Since the Monday in the week was Memorial Day and therefore no hours were worked, the claimant was expected to work Tuesday through Saturday to meet her 40 hours worked, and to still be within the doctor's accommodations. The eight hours for the holiday did not count towards hours worked. The claimant had a similar incident just a few weeks prior where she no call/no showed because she

believed she should not have to work Saturday and the employer elected to not formally discipline her (as she would have been fired) but put her on notice the 40 hours were to include work performed and any vacation or holiday time would not go towards the counting of hours worked, for purposes of complying with the doctor's note. In addition, the claimant received formal warnings for her attendance on April 7, 2015, May 8, 2015, and May 18, 2015 (Employer Exhibit One).

The claimant argued that she had hit 40 hours for the week (including the Monday holiday). In addition, the claimant went to the doctor on May 28, 2015 and received a doctor's note updating her hours worked per week to 44, effective June 1, 2015. The note also advised the claimant/patient she could now work every other weekend. No medical documentation by the employer or the claimant stated the claimant could not work a weekend prior to June 30, 2015, provided the shift did not exceed the 40-hour work week.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. After carefully reviewing all of the evidence in this case, the administrative law judge concludes that the employer has shown excessive unexcused absenteeism. It is not a question of whether an employee violates the employer's attendance policy. This employer assessed points even if

some absences were due to personal illness. The issue is whether the claimant's absences, including instances of tardiness were both excessive and unexcused. Personal illness is considered an excused absence under Iowa law.

The claimant's record shows both excused and unexcused absences under Iowa law, and inasmuch as the claimant had a second no-call/no-show under the same conditions for which she was verbally warned instead of fired, (just weeks before the final incident). The employer has credibly 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 knew she was expected to work Saturdays if she did not physically work the 40 hours during the weekday shift. No doctor's notes excused the claimant from this Saturday shift, and based on the extra chance the claimant was given for missing the last Saturday shift, she knew or should have known her job was in jeopardy. If she was unsure of calculating hours, she should have contacted human resources or her manager. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 15, 2015, (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs