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

BECKY J MADDEN
Claimant

APPEAL NO. 11A-UI-10045-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMES COMMUNITY SCHOOL
  DISTRICT**
Employer

OC: 07/03/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 23, 2011. Claimant participated. Employer participated through CFO and board secretary Karen Shimp, associate superintendent Mandy Ross, payroll coordinator/administrative assistant Carol Hundertmark. Employer's Exhibit 1 (fax pages 5 – 32) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an accounts payable bookkeeper and was separated from employment on July 7, 2011. On July 7 she was tardy due to road construction. The employer had warned her in writing on March 25, 2011, February 25, 2011 December 13, September 3, May 21 2010 and in her performance evaluation. (Employer's Exhibit 1, fax pages 8 – 21) She had been tardy or late returning from lunch on multiple occasions each month in the past. (Employer's Exhibit 1, fax pages 6, 7, 22, and 23) Her doctor's letter to the employer did not indicate her condition would prevent her from arriving to work on time. (Employer's Exhibit 1, fax page 29)

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.

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).

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. 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 final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 27, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as sher has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/pjs