

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIMILAH L WILLIAMS
Claimant

COLLIS INC
Employer

APPEAL 14A-UI-11821-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/19/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 10, 2014 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2014. Claimant participated. Employer did not participate.

ISSUE:

Was the claimant discharged due to job-connected 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 NANO operator beginning on July 3, 2014 through October 8, 2014 when she was discharged for excessive absenteeism. When hired the claimant was given a copy of the employer's attendance policy and knew that once an employee reached 12 points they would be discharged. Prior to October 6, 7, and 8; the claimant had accumulated points for missing one day due to her son's illness, for leaving early one day due to her own illness, and on two occasion for missing work or being late due to transportation issues. The claimant missed work on October 6 and 7 because she did not have a ride to work. Her ride to work was late getting her to work on October 8. The claimant reached 12 attendance points when she was late to work on October 8. Since all of her last points accumulated on consecutive days the employer was not able to give her a final warning between the time she accumulated 6 points and 12 points.

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 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 as to when and why the employee is unable to report to work. The evidence establishes that the claimant knew that reaching 12 points could result in termination of employment and the final absences were not excused. The final absences, in combination with the claimant's history of unexcused absenteeism, are considered excessive. Benefits are denied.

DECISION:

The November 10, 2014 (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

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