

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ZUNEIDA HUKAREVIC
4403 – 66TH ST
URBANDALE IA 50322

CENTRAL IOWA HOSPITAL CORP
C/o HUMAN RESOURCES
1313 HIGH ST STE 111
DES MOINES IA 50309-3119

Appeal Number: 05A-UI-05893-JT
OC: 04/24/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Zineida Hukarevic filed a timely appeal from the May 24, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2005. Ms. Hukarevic failed to appear for the hearing and did not participate. Human Resources Business Partner Barb Firch represented the employer. Exhibits One through Seven were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Zineida Hukarevic was employed by Central Iowa Hospital as a full-time Clinic Partner from August 9, 2000, until April 27, 2005, when Manager Marilyn Harden, Supervisor Linda Van Der Flugt, and Human Resources Business Partner Barb Firch discharged her for excessive tardiness.

The final incident of tardiness occurred on April 25, 2005. On that date, Ms. Hukarevic clocked in at 7:04 a.m. for a shift that was to start at 6:30 a.m. Ms. Hukarevic had not notified the employer that she needed to be tardy to work. Ms. Hukarevic had been tardy on two other days during the same two-week pay period. On April 19, Ms. Hukarevic clocked in at 6:38 a.m. and advised she was late due to transportation issues. On April 21, Ms. Hukarevic clocked in at 6:31 a.m. Ms. Hukarevic had previously been tardy on March 6, 13, 16 and 18, and April 5 and 12. Ms. Hukarevic had also been absent for entire shifts on eight occasions between October 27, 2004 and March 22, 2005, but the employer did not record the reason for the absences or whether Ms. Hukarevic properly notified the employer of the absences.

Ms. Hukarevic had received several reprimands for excessive absences and tardiness. On January 9, 2004, Ms. Hukarevic received a verbal warning. On June 3, 2004, Ms. Hukarevic received her first written warning. On March 17, 2005, Ms. Hukarevic received a second written warning. On March 23, 2005, Ms. Hukarevic received a third written warning. At the time of this warning, Ms. Hukarevic was referred to the employer's Employee Assistance Center, and to the employer's disability coordinator, for a determination as to whether she had any ongoing issues that might be covered by the Family and Medical Leave Act. She did not. When Ms. Hukarevic arrived for her shift on April 27, 2005, she was discharged pursuant to the employer's progressive discipline policy. Ms. Hukarevic had been provided a copy of the employer's attendance policy at the time of one or more of her reprimands. The attendance issue was the sole basis for the discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Hukarevic was discharged for misconduct in connection with her employment based on excessive unexcused absences. It does.

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.

In order for Ms. Hukarevic's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the employer must show that the *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Hukarevic's tardiness on April 25, 2005 was unexcused. The evidence further establishes that Ms. Hukarevic's prior incidents of tardiness were also unexcused. In light of the several warnings Ms. Hukarevic had received regarding her tardiness, Ms. Hukarevic's nine incidents of unexcused tardiness during the last two months of employment were excessive. Ms. Hukarevic was discharged from the employment for misconduct. Accordingly, Ms. Hukarevic is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The employer's account will not be charged.

DECISION:

The representative's decision dated May 24, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The employer's account shall not be charged.

jt/kjw