

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REVINA WILSON
Claimant

APPEAL NO. 10A-UI-15105-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE FLAGGING INC
Employer

OC: 09-12-10
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 a timely appeal from the October 27, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 16, 2010. The claimant did participate. The employer did participate through James Young, Director of Operations. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a supervisor, full-time, beginning in February 2010 through September 7, 2010, when she was discharged. On September 8, 2010, the claimant was scheduled to supervise a crew in Iowa City. There were numerous new employees on the job site, so Mr. Young went to the job site to assist the claimant with the new employees. The claimant was to be on the job site at 7:00 a.m. Mr. Young arrived at 6:40 a.m. and noted the claimant was not there. He called her to ask where she was and she told him she was only a few minutes away. When the claimant did not arrive after a few minutes, Mr. Young called her again and at that time the claimant realized that Mr. Young was on the job site. The claimant did not arrive at the job site until 7:15 a.m. Mr. Young told the claimant again that it was imperative that she be on time to work, as she was the supervisor. Mr. Young warned the claimant that one more instance of tardiness or unexcused absenteeism would lead to her discharge. Mr. Young told the claimant that the next day, September 8, she had to be at the office at 6:00 a.m. to meet with her crew. He specifically told her that if she had car problems, she should call him early enough so that he could come and get her or so that he could get or send someone else to get her. On September 8 the claimant was not at work at 6:00 a.m. and called after that telling Mr. Young that she had car problems. The claimant did not come to work and Mr. Young discharged her for repeated absenteeism after repeated warnings. The claimant had been warned over ten times about the need for her to be to work on time.

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 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 that 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 October 27, 2010 (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/kjw