

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA A LUKE
Claimant

APPEAL NO. 09A-UI-14681-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 08-30-09
Claimant: Appellant (1)

Iowa Code section 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 September 24, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 28, 2009. The claimant did participate. The employer did participate through Alicia Alonzo, Human Resources Generalist and (representative) Ken Thomas, Superintendent.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning November 27, 2007 through September 1, 2009 when she was discharged.

The claimant was discharged from employment due to final incidents of absenteeism that occurred on August 27 and August 28, 2009 when she did not report to work because she did not have daycare for her child. The claimant was last warned on August 18, 2009, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on August 24, 21, 20, 19, 18, 13, 12, 11, July 31, 22, 21, 20, 17, 10, 9, 8, 7, June 16, 15, 12, 11, May 18, 15, 14, 8, 7, 6, 1, April 22, 14, March 30, 24, 13, 12, 11, 10, 9, 6, 5, 4, 3, 2 and February 27, 2009. The claimant's absences for FMLA for herself were all excused. The claimant had difficulty arranging childcare for her three-year-old.

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 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.

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 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 September 24, 2009, 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/css