

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SARAH R TURNHAM
Claimant

APPEAL NO. 18A-UI-00256-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 12/03/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sarah Turnham (claimant) appealed a representative's January 4, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 30, 2018. The claimant participated personally. The employer participated by Sam, Martin, Assistant General Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 10, 2017, as a part-time cashier. The employer had a handbook but it is uncertain whether the claimant received a copy. The claimant knew that excessive absenteeism could result in suspension or termination.

The employer issued the claimant three-day suspension on July 6, 2017, for accumulating nine attendance points in a ninety day rolling period. Most of the claimant's attendance points were for tardiness due to lack of transportation. The claimant was tardy for work on August 25, 31, September 4, 5, and 12, 2017. The employer issued the claimant a written warning for each of her absences. The warning indicated she would be terminated if she accumulated ten attendance points or if she received three suspensions in a twelve-month period. She would receive a three-day suspension if she collected nine attendance points. On September 19, 2017, the employer issued the claimant a second three-day suspension for attendance. The claimant had accumulated nine attendance points in a ninety-day rolling period.

On October 7, 2017, the claimant had one attendance point fall off. On November 22, 2017, the claimant was tardy for work and she was assessed one point. Her point total was nine. According to the employer's rules, the claimant would be issued a third suspension. The employee terminated the claimant on November 27, 2017, for receiving three suspensions in twelve months.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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 representative's January 4, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs