

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATALIE M JENSEN
Claimant

GREEN PLAINS RENEWABLE ENERGY INC
Employer

APPEAL NO: 20A-UI-11323-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
IAC 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 10, 2020, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 5, 2020. The claimant participated in the hearing. Cheryl Baines, Human Resources Business Partner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative assistant for Green Plains Renewable Energy from July 29, 2019 to July 14, 2020. She was discharged from employment due to a final incident of absenteeism that occurred on July 14, 2020.

Employees accumulate paid time off (PTO) each pay period and can use it for illness or vacation. The employer encourages a 48-hour notice of the use of PTO but understands life events occur that sometime prevent notice. The employer tries to work with employees when they run out of PTO and it is left to the manager's discretion on whether to allow unpaid time off.

O February 27, February 28, March 2 and March 3, 2020, the claimant used unscheduled PTO. On March 3, 2020, the claimant's supervisor told her she had exhausted her PTO and any further absences would be subject to disciplinary action. The claimant was absent March 4, March 5 and March 6, 2020, all of which was unapproved time off. The employer prepared a verbal warning for the claimant for March 4, 2020, a written warning for the claimant for March 5 and a final written warning for March 6, 2020. The claimant notified the employer she was experiencing personal problems and requested a leave of absence which the employer granted. The claimant was on leave beginning March 9 and returned to work April 20, 2020. At that time the employer issued the claimant the verbal, written and final written warnings and the claimant

understood any future violations would result in further disciplinary action up to and including termination.

On July 8, 2020, the claimant reported for work and then told her manager she needed to take PTO. She was told she had 24 hours of PTO and was allowed to use it July 8, July 9 and July 10, 2020, which was already scheduled. That absence left the claimant with 2.50 hours of PTO.

On Sunday, July 12, 2020, the claimant texted her manager and asked to speak with her. She explained she was experiencing personal problems and asked her manager to speak to Cheryl Baines in Human Resources. The claimant's manager said she had 2.50 hours of PTO for which she was approved but that she could not take any more than that or it would be unexcused. Later that day the claimant called and said she needed Monday off to get her stepson on a flight to Virginia and her manager told her she could only take the 2.50 hours of PTO she had remaining. At 9:45 p.m. the claimant texted her manager stating she would be back to work Wednesday, July 15, 2020. She did not report for work July 13 or July 14, 2020, and on July 14, 2020, Ms. Baines called the claimant and informed her that her time off was unexcused and her employment was terminated.

The employer felt the claimant was abusing her time off and showed a pattern of usage of accumulating five days of PTO and then taking the time off on a Thursday, Friday, Monday, Tuesday and Wednesday block.

The claimant's husband is a non-functioning alcoholic and binge drinks until he has to go to detox or injures himself and requires medical attention or is civilly committed. The claimant sought treatment for her own substance abuse issues during her leave of absence from March 9 through April 16, 2020. The claimant used her PTO as her husband suffered relapses that went on for a period of days. On July 2, 2020, the claimant's 14 year-old stepson arrived from Virginia to spend the summer with his father and the claimant. When he realized his father was drinking he was very uncomfortable and wanted to return to Virginia. The claimant and her husband do not have any family in the area. The claimant did not feel she could leave her stepson home alone with his father drinking heavily and tried to find a flight home for him the weekend of July 11, 2020, but his mother was on vacation and not home in Virginia. As a result, the claimant felt she had to stay home with her stepson and his father until he could get a flight home. Consequently, she notified the employer she would not be at work July 13 and July 14, 2020, and her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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).

The claimant was in a very difficult position with her husband's drinking, her stepson's visit and her employment. As a result of her husband's drinking, she did not have any PTO left when she needed it July 13 and July 14, 2020. The employer worked with the claimant in the past, but felt her PTO usage and unexcused absenteeism was getting out of hand. The claimant takes responsibility for her attendance and understands the employer's position. While the administrative law judge is sympathetic to the claimant's personal issues and encourages her to continue in AI-Anon, the claimant exceeded her PTO July 13 and July 14, 2020. The employer told the claimant she only had 2.50 hours of PTO remaining on July 12, 2020, and she chose to take July 13 and July 14, 2020, off work anyway.

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 absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The September 10, 2020, reference 02, 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.



Julie Elder
Administrative Law Judge

November 13, 2020
Decision Dated and Mailed

je/mh