

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TITANIA REYNOLDS

Claimant

APPEAL NO: 13A-UI-01439-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01-06-13

Claimant: Appellant (1)

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 February 4, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 7, 2013. The claimant participated in the hearing. Barb Larsen, Training Manager, 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 production worker for Tyson Fresh Meats from January 11, 2011 to November 8, 2012. She was discharged from employment for exceeding the employer's allowed number of attendance points.

The employer uses a 14-point, no-fault, rolling calendar year attendance policy. Employees are assessed one point if they call in at least one-half hour before the start of their shift to report their absence; are assessed three points if they call in later than 30 minutes before the start of their shift; are assessed three points for a no-call/no-show; are assessed one point if they fail to call to report a tardiness; and are assessed one point if they call and properly report an incident of tardiness.

On April 10, 2012, the claimant had an excused incident of tardiness and received one-half point; on April 30, 2012, she had an excused absence due to family illness and received one-point; on June 8, 2012, she had an unexcused absence for personal business and received three points; on September 10, 2012, she called in and properly reported she was ill and received one point; on October 8, 2012, she was a no-call/no-show and received three points for a total of eight and one-half points and received a written warning about her attendance.

The claimant lost her driver's license and was driving to work on a suspended license. On October 15, 2012, she was stopped by the police and they discovered her license was suspended. She was jailed for one day and her car was impounded. She talked to the employer about working with her and letting her come in a little late or leave a little early but the employer could not accommodate her schedule change requests due to the fact it would have affected the line she worked on. The claimant was granted time off to go to court to address the problem with her suspended license October 29, 30 and 31, 2012.

The claimant did not have transportation from November 1, 2012, through her separation date of November 8, 2012. The employer has no record of her calling in to report those absences and consequently she was assessed three points for each of those absences, which brought her to a total of 23.5 points. The claimant testified she called in every day between November 1 and November 8, 2012, and received a letter that her employment was terminated for exceeding the allowed number of attendance points.

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:

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). The claimant lost her transportation and was unable to report for work after November 1, 2012. Regardless of whether she called in and properly reported her absences, she would have exceeded the allowed number of attendance points and faced termination due to attendance because she did not have a driver's license. 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. Benefits are withheld.

DECISION:

The February 4, 2013, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css