

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PAGE O CALEY**

Claimant

**APPEAL 14A-UI-06473-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**

Employer

**OC: 05/11/14**

**Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 17, 2014 (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2014. The record was left open until 9 a.m., on July 17, 2014, for the parties to submit specific additional documents. Neither party had additional testimony to offer. Claimant participated. Employer participated through Manager Greg Holliday. Employer's Exhibits One and Two were received. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cashier and was separated from employment on May 12, 2014. The parties agree she was discharged and did not quit. Her last day of work was Tuesday, May 6, 2014. She was a no-call/no-show on Thursday, May 8 for her scheduled 11 p.m. to 7 a.m. shift. On Friday, May 9 she was also a no-call/no-show for her scheduled shift and after Holliday attempted several times to locate her, she said she had medical issues but indicated nothing that would have prevented her from reporting her absence. She was a no-call/no-show on Saturday, May 10 also and Holliday decided to terminate her employment.

She presented a medical excuse from Tara Kaiser, ARNP of Cedar Falls Family Medicine, dated as Monday, May 12, indicating she was seen on that date and was excused from work from Saturday, May 10 through Wednesday, May 14 due to illness, (Claimant's Exhibit A, p. 2 and Employer's Exhibit 1, p. 4). She did not present Holliday with a May 8, 2014 medical excuse from Covenant Clinics, from Kathleen Megivern, D.O., that claimant was unable to work May 8 and 9, 2014 due to medical reasons. No date of service was noted, (Claimant's Exhibit A, p. 3). Holliday had texted her on May 6 that she would not be granted time off Saturday night and alluded to her not having child care for work but having a sitter for seeing "male strippers,"

(Claimant's Exhibit A, p. 1). On April 28 Holliday had texted her 14 minutes into her shift asking if she was reporting to work that night. She replied the next morning that she had her days mixed up and accepted fault for the situation, (Employer's Exhibit 2, p. 1). On May 2 she texted Holliday at 12:33 a.m., an hour-and-a-half beyond her shift start time, that she had a new alarm and daylight savings time was set wrong but she was going to report to work, (Employer's Exhibit 2, p. 2). Another text on an unspecified date showed claimant texting Holliday that her daughter took her phone and she woke up at 2 a.m., missed her shift and asked him to give her a chance and not fire her, saying it would not happen again, (Employer's Exhibit 2, p. 3). Employer notified claimant her job was in jeopardy by a written warning, issued on April 10, 2014, after she was over two-and-a-half hours late for her shift on April 9, 2014 due to oversleeping. He reminded her and wrote that tardiness and attendance had been discussed with her in the past, (Employer's Exhibit 1, p. 1).

The verbal warnings and other dates of attendance issues were not documented or were not available for the hearing. The log in at the cash register is the method of time keeping. On April 4 claimant was 59-minutes tardy and on April 13 she was 43-minutes tardy. The employer's policy requires employees to report an absence at least two hours before the beginning of the shift.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused because it was not properly reported. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The June 17, 2014 (reference 01) decision is modified without change in effect. Claimant did not quit but 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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