IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHRISTY TREVINO Claimant **ARIZONA LABOR FORCE INC** Employer	**APPEAL NO. 14A-UI-03327-BT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/02/14** **Claimant: Appellant (2)**

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Christy Trevino (claimant) appealed an unemployment insurance decision dated March 20, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Arizona Labor Force, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2014. The claimant participated in the hearing. The employer participated through Charnay Mothershed, Human Resources Administrative Assistant and Larry Brook, Regional Operations Manager. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time customer service representative and was employed from May 16, 2013, through March 3, 2014. She was discharged from employment due to excessive absenteeism with a final incident on February 28, 2014, when she was a no-call/no-show. Employees are required to personally speak with his or her supervisor to report an absence. Additionally, if the supervisor is not in the local area, the employee is required to contact a co-worker who can cover the office during the employee's absence. The claimant missed work on February 5, 2014, and February 12, 2014, due to transportation issues. She missed work due to illness on the following dates but failed to properly report her absences: February 19, 20, 21, 24, 25, 26, 27, and 28, 2014. In all but one case, the claimant sent text messages to her supervisor, which is not permissible but about half of those messages were not sent in a timely manner. She was also a no-call/no-show on February 20, 2014.

The claimant insists she properly reported her absences because her supervisor previously accepted text messages but the supervisor disputes that claim. However, the supervisor never

advised her during February 2014, when she did work that text messages were not acceptable. The claimant also contends she called her co-employee in the office but there is no record of that. She stated that her doctor's office faxed over her medical notes but the employer received no medical excuses prior to the date of termination. The employer never issued the claimant any warnings for her attendance because the employer said there was not sufficient time to issue a warning when she was in the office during that last month of employment. The claimant did work on the following days in February 2014: 4, 6, 7, 10, 11, 13, 14, 17, 18, and 25.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1)**.**

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 3, 2014, for excessive 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. 871 IAC 24.32(7). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). No warnings were issued to the claimant prior to her termination.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 20, 2014, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs