

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA I ANDERSON
Claimant

THE PRINTER INC
Employer

APPEAL 15A-UI-11929-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/15
Claimant: Appellant (1)

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 October 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2015. The claimant participated personally. The employer participated through Karen Michael, human resources generalist. Frank Hampton, plant manager, also testified. Employer Exhibits One through Seven were admitted into evidence.

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: The claimant was employed part-time as a bindery operator and was separated from employment on September 20, 2015, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. Points can be reduced with proof of doctor's documentation. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving 12 points in a rolling 12-month period. The claimant was made aware of the employer's policy at the time of hire. The claimant was previously discharged and then immediately rehired. The employer placed the claimant on a final written warning upon rehire (Employer Exhibit Seven), which the claimant signed, and made aware that any future attendance points during her probationary period will "put her job in jeopardy" (Employer Exhibit Seven).

Between July 28, 2015 and the claimant's separation on September 20, 2015, the claimant was ten minutes late on August 28, 2015 (Employer Exhibit Six) when she arrived on time but failed to clock in. The claimant was then 40 minutes late on September 14, 2015, (Employer Exhibit Four) because her car was repossessed unexpectedly, and she had to take a cab to work. The

employer reviewed the claimant's performance evaluation with her on September 16, 2015, which referenced her poor attendance and "needs to work on this in order to maintain position" (Employer Exhibit Three). The final incident occurred when the claimant was over two hours late to her shift on September 19, 2015 (Employer Exhibit Two) due to a lack of transportation. She was subsequently discharged (Employer Exhibit One).

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).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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. Even without taking into consideration any attendance issues that occurred during the claimant's first period of employment, the employer has credibly established that claimant was warned on July 28, 2015, and again on September 16, 2015, that further unexcused absences could result in termination of employment (Employer Exhibits Three and Seven), and she had three separate occurrences. The claimant was aware she needed to arrange alternate transportation following the tardy on September 14, 2015. The final absence on September 19, 2015, when she was over two hours late due to transportation again was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 20, 2015, (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs