

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAITY M GROTH
Claimant

KARPINSKE ENTERPRISES SOUTH LLC
Employer

APPEAL 21A-UI-01015-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/27/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Caitlyn Groth (claimant) appealed a representative's December 2, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Karpinske Enterprises South (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2021. The claimant participated personally until she said she was choosing to disconnect during the employer's testimony and hung up the phone. The employer participated by Daniel Neumann, Human Resources Director, and Marsha Wilson, Area Supervisor.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file. 21A-UI-01015.S1 and 21A-UI-01017.S1 were heard at the same time.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason.

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 for the employer from August 14, 2019, through September 25, 2019, as a full-time floor supervisor. She signed for receipt of the employer's handbook on August 5, 2019, prior to her first day of work. The employer has a policy, which requires employees to report absences by telephone call to a manager at least two hours prior to the start of the shift.

The claimant was tardy on September 5, 15, 17, 18, 19, 22, and 25, 2019. The employer warned the claimant of termination if she continued with her excessive absenteeism. On September 26, 2019, the claimant sent a text message fifty minutes prior to the start of her shift saying "I'm not coming in today I'm tired and need more sleep write me up idc".

The employer attempted contact with the claimant after September 26, 2019, to ask why she did not report two hours prior to the shift by telephone call. She did not respond. On September 30, 2019, the claimant appeared at the jobsite asking for her paycheck. The employer terminated the claimant for excessive absenteeism and failure to follow instructions after warnings of termination.

The claimant filed for unemployment insurance benefits with an effective date of September 27, 2020. Her weekly benefit amount was determined to be \$205.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation September 27, 2020.

REASONING AND CONCLUSIONS OF LAW:

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(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

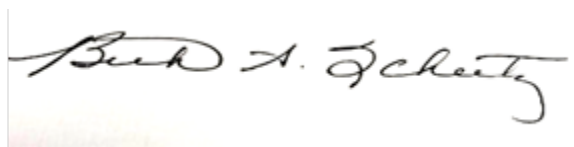
An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. On September 9, 2019, the claimant did not properly report her absence or respond to the employer's inquiries. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's December 2, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

February 23, 2021
Decision Dated and Mailed

bas/kmj