

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA DOHRN
Claimant

APPEAL NO. 10A-UI-03272-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA SELECT FARMS INC
Employer

**Original Claim: 02-07-10
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 March 3, 2010, 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 April 14, 2010. The claimant participated in the hearing. Bob Walkup, Farm Manager, and Cathy Rieken, Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 farm technician for Iowa Select Farms from October 2, 2008 to February 8, 2010, when she was discharged for excessive absenteeism. The employer's attendance policy provides that six unexcused absences within one year may result in termination. The claimant missed five days from April 2009 through August 2009. She had six excused absences during September 2009 and October 2009. Her unexcused absences increased after that and she missed 15 days from November 29, 2009 through February 8, 2010. Six of those days were due to bad weather, but the claimant was the only employee that missed work due to the weather. The employer only has a certain number of employees and when one employee is absent, it places a hardship on the other employees. Previous verbal warnings had been issued, but the claimant received a written warning for attendance on December 29, 2009. Subsequent to her formal warning, she had another six unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related 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(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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged February 8, 2010, for excessive absenteeism. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility, such as transportation, lack of childcare, and oversleeping, are not considered excused. Id. The claimant was warned that further unexcused absences could result in termination of employment, and the final absences were not excused. The final absences, in combination with the claimant's history of absenteeism, are considered excessive. Therefore, benefits must be denied.

DECISION:

The March 3, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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/kjw