

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SUE A MCFARLAND
Claimant

CBE COMPANIES INC
Employer

APPEAL 15A-UI-09413-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
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 August 18, 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 September 8, 2015. The claimant participated personally. The employer participated through Misty Reinard, Direct of Operations. Danny White and Mary Phillips were employer observers but did not testify. Employer Exhibits One through Five 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 full time as a collector and was separated from employment on August 3, 2015, when she was discharged.

The employer has multiple policies that incorporate its attendance policy, including no-call/no-shows, and notification and one that allocates point values to attendance infractions. In addition, the employer has a policy that warrants discharge when an employee accrues three warnings during a six-month period. The claimant was made aware of the policies upon hire, and through her employment.

The final incident occurred when the claimant overslept for her 8:00 a.m. shift, and notified the employer of her tardy at approximately 8:35 a.m., before arriving at 9:06 a.m.(Employer Exhibit One). The claimant had been previously counseled for her attendance on May 29, 2015 for reaching 36.25 attendance points, as a result of taking extended breaks, extended lunches, unscheduled PTO, and taking time without PTO to cover the absence (Employer Exhibit Two). The third warning in six months occurred on February 24, 2015, when the claimant overslept, and did not notify the employer of her absence until after her start time (Employer Exhibit Three).

The claimant admitted to not being a morning person, and in the final instance, failed to set an alarm for her shift. The employer offered alternate shifts, including a later start time, but the claimant's personal life with children did not allow her to accept a later start time and longer shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 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 claimant knew she was not a morning person, but did not set an alarm, and on more than one occasion overslept, missing her start time and proper notification for the employer. The claimant's final absence was avoidable and therefore unexcused.

Cognizant of the claimant's personal life and the stress a job separation has created for her family, 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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 18, 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/css