

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATOYA C SMITH
Claimant

DELIMART PROPERTIES INC
Employer

APPEAL 18A-UI-09086-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 22, 2018, reference (01) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2018. Claimant participated. Employer participated through John Miller, General Manager. Employer's Exhibit 1 was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cashier beginning on August 8, 2017 through August 1, 2018 when she was discharged for failing to abide by the attendance policy. On April 30 claimant was given and signed for updated rules of conduct. The rules put her on notice that multiple unexcused shift call offs would lead to her discharge.

On December 25, 2017 the claimant was a no-call/no-show for her scheduled work shift. She did not report her absence to the employer prior to the scheduled start time of the shift. The next day the claimant reported it was too cold for her to take her daughter out of the house.

On July 23 the claimant did not personally and properly report her absence as she had been instructed to do. She had her boyfriend call in sick for her after 8:00 a.m., the start time of her shift. When she arrived at work on July 24 she was sent home for the shift by the assistant manager, Sam Stutzman. Mr. Stutzman sent the claimant home because the week before she had called in sick and then later that same day was seen out shopping. The week before the claimant was told she needed to properly report her absences by calling before the start of her shift. At the time the general manager Mr. Miller was out of town and Mr. Stutzman wanted the claimant to talk to him. Mr. Stutzman specifically told the claimant that she was to report for her scheduled work shifts on July 30 and July 31 at 8:00 a.m. to speak to Mr. Miller. Mr. Stutzman never told the claimant not to return to work as he made no arrangements for anyone else to

cover her work shifts on July 30 and 31 because he expected the claimant to show up to work her scheduled shifts. Mr. Miller was at the store on July 30 at 8:00 a.m. The claimant was a no-call/no-show for her shift. The claimant called around 11:30 and asked to speak to Mr. Miller. By that time Mr. Miller had left the store. The claimant was a no-call/no-show for her scheduled work shift on July 31. Mr. Miller was at the store at 8:00 a.m. The claimant called the store after Mr. Miller had already left to go to another property. On August 1 the claimant arrived at work to pick up her paycheck. She was told at that time that she was discharged for poor attendance.

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 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(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 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). Absences due to **properly reported** illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The employer offered the more credible testimony as set out in the findings of fact. The claimant had been told to come to work for her shift on July 30 and July 31 but simply chose not to do so. Prior absences are set out in the employer's exhibit.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to 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 absences were not excused. The final absences, in combination with the claimant's history of unexcused absenteeism, are considered excessive. Benefits are denied.

DECISION:

The August 22, 2018, (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs