

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUQUITA M HALL
Claimant

APPEAL NO. 12A-UI-12309-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 09/16/12
Claimant: Appellant (1)

Iowa Code § 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 October 4, 2012, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on February 13, 2013. The claimant did participate and was represented by Valerie Cramer, Attorney at Law. The employer did participate through Teresa TeKolste, Human Resources Manager; Donna Miller, Supported Living Coordinator; Aaron Peltz, Direct Support Coordinator; Jen Zajicke, Associate Director; and was represented by David Williams of TALX UCM Services Inc. Claimant's Exhibit A was entered and received into the record. Employer's Exhibits One through Eight were entered and received 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: The claimant was employed at Mosaic as a direct support associate full time beginning November 28, 2011 through September 11, 2012. On August 29, the claimant asked to change from full time employment to "PRN" status or on an as-needed basis effective September 13, 2012. Her request was granted. The claimant had been given a copy of the employer attendance policy which put her on notice that if she missed time she would be required to make it up. The claimant was to work on September 2, 3 and 4. She called in absent each of those days due to either her own illness or that of her child. The claimant worked on September 5 and 6. Since she had missed three days earlier in the week, the claimant was required to make up the missed time. She was assigned by Mr. Peltz to work on September 8, 9 and 10 to make up for missing on September 2, 3 and 4. The claimant knew she was to work on September 8, 9 and 10. She was to work on September 8, at 3:00 p.m. The claimant sent Ms. Miller (who was on call that day) a text at approximately 12:30 p.m. on September 8 that said, "This. [sic] Is quita I will not be able to work my son is still sick." (Employer's Exhibit 3) She received no answering text or telephone call that day from Ms. Miller. Ms. Miller made arrangements for another employee to cover the claimant's September 8 shift. On September 9 Ms. Miller sent a

text to the claimant that said, "Texting an absence isn't following policy and procedure. You are taken off the schedule for tonight. You will need to come to office tomorrow for follow up. Jen Z said we would let you know what time." About one-half hour later the claimant texted back to Ms. Miller, "Don't text me about texting not in ur [sic] policy. You Guy's text me I don't care to hear that! Don't text me no more!" (Employer's Exhibit 3) Ms. Miller texted back: "Just doing what I was told too. Thought texting is what u preferred: (Employer's Exhibit 3). The claimant texted back "U guys started that texting and I never told u I preferred do what I just. [sic] Told you don't text me back!" (Employer's Exhibit 3) The employer sent no further texts to the claimant. The claimant knew she was to work that night but had been taken off the schedule only for that night. Mr. Peltz then attempted to call the claimant on Monday morning September 10 to tell her to be at the office to discuss her attendance at 3:30 p.m. on September 10. The claimant did not answer the phone. Mr. Peltz had called the claimant numerous times previously and recognized the claimant's voice mail that answered and said "Quita." Mr. Peltz left the claimant a voice mail message telling her that she was to be at the office on September 10, at 3:30 p.m. to discuss her attendance. The claimant's e-mail was active until September 19, 2012. The claimant did not show up for the meeting on September 10 nor did she call or text or e-mail that she would not be at the meeting. The employer had no intention of discharging the claimant at the September 10 meeting merely taking the next step in the disciplinary process. The claimant herself told the employer not to text her any longer. The claimant's exhibits do not accurately reflect the dates the text messages were sent or by whom. At the time of the hearing the administrative law judge examined Ms. Miller's cell phone and the dates the texts were sent. The claimant had prior warnings about her attendance including a warning on her performance evaluation that she was to locate her own replacement. The claimant had been given a verbal warning about the requirement that she work all of her scheduled shifts. The nature of the employer's business, caring for people with special needs, makes attendance at work extremely important. In light of the claimant's failure to work the required shifts, her failure to appear for a meeting to discuss her attendance, the employer considered her a voluntary quit. The claimant did not attempt to reach the employer either by telephone or e-mail after she skipped the meeting on September 10. When the claimant did not show up for the meeting or call to explain her absence, the employer sent her a letter on September 11 ending her employment and Mr. Peltz left her another voice mail message telling her to expect a letter from the employer.

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.

871 IAC 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 administrative law judge is persuaded that the claimant knew she was to work on September 8, 9 and 10. She also knew she was to report for a meeting on September 10 but did not do so. She had been previously warned about her attendance. The claimant alleges she lost her telephone. She sent text messages to Ms. Miller after she was told that she would have a meeting with the employer on September 10. If the claimant had really lost her telephone she would have contacted the employer to ask what time the meeting was to take place. Because the claimant was not absent as a no-call/no-show for three consecutive shifts, the administrative law judge believes this case is a discharge not a voluntary quit. The claimant purposefully chose not to attend a meeting where she was going to be disciplined. The employer’s testimony is supported by the documents and is more credible than that of the claimant. The claimant’s failure to attend her disciplinary meeting in light of her prior warnings for attendance is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The October 4, 2012 (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/css