

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARNITA DEARON
Claimant

APPEAL NO. 14A-UI-06942-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 06/01/14
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 an appeal from the June 24, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on July 28, 2014. The claimant did participate. The employer did participate through Susan Gardner, Personnel Administrator.

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 full-time as an assembler beginning on January 14, 2013 through June 3, 2014 when she was discharged for excessive absenteeism. The claimant last missed work without excuse on June 3, 2014 when she left to have her doctor complete FMLA paperwork that would have excused her absence back on May 9. The claimant knew from May 9 on that she had to have the paperwork completed and submitted but did not get it accomplished. The claimant was suspended for two working days on May 29, and May 30 and could have gone to get the paperwork completed on either of those two days before she returned to work on June 3. She chose not to do so. When asked by her supervisor why she had not completed the required paperwork during her prior suspension she merely indicated she had chosen to do other things. The claimant had been given a copy of the employer's attendance policy and knew that she was reaching the end of the process when she was given her final two-day suspension. The claimant's absence on June 3 was not excused.

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 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). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

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 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 June 24, 2014 (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/pjs