

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUE L BEHRENS
Claimant

WINGS AMERICA LIMITED PARTNERSHIP
Employer

APPEAL 15A-UI-08621-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/05/15
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 July 22, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2015. Claimant did participate. Employer participated through Dawn Riser, Assistant Manager.

ISSUES:

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 full-time as a server beginning on August 9, 2004 through June 29, 2015 when she was discharged. The claimant had been suspended for three days due to her poor attendance, including a no-call no-show, on April 28, 2015. At that time she was told that she was being placed back on probation due to her attendance issues. The claimant was also given a final written warning on April 28 and was specifically put on notice that any further infractions would lead to her discharge. The claimant had been specifically talked to about disappearing from the work floor where no one could find her on prior occasions.

The claimant left the work floor without permission on June 27 to go out and talk to her husband at his truck during the noon hour when the restaurant was busy. During the time the claimant was not working, she was punched in on the time clock and was getting paid.

Ms. Reiser looked for the claimant all around the facility including three sets of bathrooms and could not locate her. Ms. Reiser spoke to the other servers who told her they did not know where the claimant had gone. At that time none of them told Ms. Reiser that they were covering the claimant's work sections. When Ms. Reiser could not locate the claimant she sat in the seating area of the restaurant with paperwork specifically to see when the claimant returned to

the floor. The claimant did not return to the floor until about 30 minutes after Ms. Reiser sat to wait for her. When the claimant returned she admitted she had been gone longer than 10 minutes but denied that she had been gone 30 minutes. Ms. Reiser contacted the general manager who told her the claimant was on a final written warning and the next step in the disciplinary process was discharge.

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).

The administrative law judge is persuaded that the claimant was away from her work station for 30 minutes. She did not have permission to do so and was punished in while she was taking care of personal business. The claimant had been warned about disappearing from the work floor and her prior attendance issues. The claimant admitted she was gone longer than 10 minutes. Her absence from the floor was not excused and in light of her prior warnings for similar behavior, the employer had established job connected misconduct. Benefits are denied.

DECISION:

The July 22, 2015 (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