

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NENFARKER DOE**  
Claimant

**THE HON COMPANY**  
Employer

**APPEAL 14A-UI-08461-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/13**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 9, 2014, (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2014. Claimant participated. Employer participated through community relations member Shea Pavlicek and was represented by Sandra Linsin of Employers Edge. The hearing notice listed Iowa Code § 96.4(3), ability to and availability for work and the parties waived notice of Iowa Code § 96.5(1) voluntary quitting and Iowa Code § 96.5(2)a discharge for misconduct. Claimant's Exhibits A and B were received. Employer's Exhibit 1 (E-1 through E-13) was received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a machine operator and was separated from employment on June 30, 2014. She returned to work on May 5, 2014, after leave of absence that began on December 27, 2013. (Employer's Exhibit E-12) She worked through May 9, 2014. She then had light duty concerns and, after presenting additional medical information, the employer agreed to accommodate her effective May 14. In spite of that, she did not return to work and presented no medical excuse from May 9 through June 2. Pavlicek sent her a June 3 letter after her no-show on May 14 and directed her to provide FMLA leave paperwork from May 10 through May 28 or later with a June 20 deadline. (Employer's Exhibit E-2) She did return the documents indicating she was not able to work from June 3 through June 26. (Claimant's

Exhibit A, Employer's Exhibit E-3) Pavlicek sent her a letter on June 17 at her address of record with a deadline to respond with FMLA paperwork covering June 3 through June 27, by June 27 or she would be discharged. (Employer's Exhibit E-1) Neither claimant nor her medical provider gave the employer the medical progress notes dated July 10 keeping her off work until then and releasing her to return to work. (Claimant's Exhibit B) Claimant did not call to report her absences to the employer or provide a medical excuse for any work days after June 26.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 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. Claimant had complied with reporting and information requirements before the most recent absence and replied to Pavlicek after the termination letter was received. This indicates her understanding of the employer's process and expectations. Apart from any specific personnel handbook rules 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 employer has credibly established that claimant was warned about maintaining communication with the employer and she failed to provide the requested information excusing her absences from May 9 through June 2 and failed to report absences or provide medical excuse after June 26. This is considered excessive and unexcused absenteeism. Benefits are withheld.

**DECISION:**

The August 9, 2014, (reference 02) unemployment insurance decision is affirmed. 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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