

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NANCY J JONDAL**  
Claimant

**VANTEC INC**  
Employer

**APPEAL 15A-UI-11895-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/04/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 20, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2015. Claimant participated. Employer participated through representative, Dennis Peterson, human resources manager, Joan Kennedy, and production supervisor, Jim Gardner. Employer Exhibit One was admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related 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 packaging technician from October 8, 2014, and was separated from employment on September 25, 2015, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving eight points. The policy provides for a point to be removed every calendar month if an employee has no occurrences. Employees are to call in an hour before the start of their shift to talk to their supervisor or leave a message. Employees are given four points for a no-call/no-show. Claimant was aware of the employer's policy.

The final incidents occurred when claimant was a no-call/no-show on September 23 and 24, 2015 for her shifts. On September 23, 2015, claimant did not follow the employer's call-in procedure. Claimant overslept and did not call the employer at all on September 23, 2015. On September 24, 2015, claimant did call the employer prior to her shift. Claimant left a message with the employer that she was going to be late. Claimant did not mention why she would be late or when she would be in. Employees are considered tardy if they report to work within four hours of the scheduled start time of their shift. Claimant did not come to work at all that day.

Claimant did not call the employer to tell it she would not be in at all. On September 25, 2015, claimant met with Ms. Kennedy and Mr. Gardner about her absences. Claimant told them that she overslept on September 23, 2015 and did not wake up until 1:00 p.m. Claimant also told them she called in to say she was going to be late on September 24, 2015 and had no reason as to why she did not come to work at all that day. Claimant did not mention being sick on either day.

Claimant was last warned on March 3, 2015, when she reached four points. Claimant was reminded that at eight points she might be discharged. Claimant signed for the warning. This was the only warning claimant received.

### **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. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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 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; however, 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. Claimant’s final absences were on September 23 and 24, 2015. It is undisputed that claimant failed to follow the employer’s call-in procedure to report her absence on September 23, 2015 thus resulting in a no-call/no-show and she accumulated four more points for this absence. Furthermore, even after claimant woke up after her shift had already started, she failed to call the employer to let it know she would not be at work. On September 24, 2015, even though claimant followed the employer’s call-in procedure, she told the employer she was going to be at work, just late. Claimant then failed to report to work at all on September 24, 2015 and failed to update the employer on her status. By failing to follow-up with the employer that she was not going to come to work at all that day, claimant rendered her earlier phone call useless and misleading, thus resulting in another no-call/no-show. Furthermore, claimant failed to inform the employer the reasons for her absences, until the Monday after she had been discharged. Claimant did not properly report her absences on September 23 and 24, 2015. Claimant had also been warned on March 3, 2015 about her attendance issues. Claimant was told on March 3, 2015 she had four points and if she reached eight points she may be discharged. Employer Exhibit One.

The employer has established that the claimant was warned that further unexcused absences may result in termination of employment and the final absences were not excused. Employer Exhibit One. The final absences and claimant’s failure to even communicate with the employer that she would be absent from work the entire day on both days, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The October 20, 2015, (reference 01) 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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