

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M KENNEDY
Claimant

DAC INC
Employer

APPEAL 15A-UI-12311-H2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 3, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2015. Claimant participated. Employer participated through (representative) Meggi Muhlhausen, Human Resources Assistant, and Ryan Fitch, HCBS Coordinator.

ISSUE:

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a direct support professional beginning on March 26, 2015 through October 18, 2015; when she was considered a voluntary quit after being a three-day no-call/no-show. The claimant had been given a copy of the employer's policies and knew how to properly report her absences as she had done so in the past. The nature of the employer's business requires that they have a supervisor on-call at all times. Thus, employees who are going to miss work or be late to work are required to call the on-call supervisor. Texts are not allowed and the claimant knew they were not allowed.

The claimant sent a text to the supervisor on October 16 that she would not be into work due to a family emergency. She was in the emergency room and could have called but chose not to do so. The claimant did not properly report her absence for October 16. Immediately after she sent the text the supervisor tried to call the claimant. She did not answer the telephone. The claimant was a no-call/no-show for three consecutive work days on October 16, 17, and 18. A letter was not mailed to her until October 22 telling her that she was considered to have been discharged for her absences on October 16, 17, and 18.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Inasmuch as the claimant failed to report for work or properly notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

Should a higher authority determined the claimant did not voluntarily quit, in the alternative, 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). For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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). An absence that is not properly reported cannot be considered excused under the unemployment law no matter what the reason for the absences. The claimant’s last three absences were not properly reported, as the claimant chose to send a text rather than call the employer as required. Her absences in addition to her prior absences are excessive. Benefits are denied.

DECISION:

The November 3, 2015 (reference 01) decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. 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

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