

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEFANY L ANDERSON
Claimant

APPEAL NO: 14A-UI-08608-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

OC: 12/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 12, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 9, 2014. The claimant participated in the hearing. Lori Lopez, Human Resources Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time material handler for Ryder Integrated Logistics from February 10, 2013 to July 24, 2014. She was discharged from employment due to a final incident of absenteeism that occurred on July 17, 2014.

The employer uses a no-fault, occurrence based, rolling calendar year attendance policy. Employees receive one occurrence for an absence, an incident of tardiness or leaving early, the latter two regardless of how late the employee is or how early she leaves. The employer issues written warnings to the employee following each occurrence. Employees are discharged upon reaching six occurrences in a rolling calendar year. Occurrences drop off after one year. If an employee is absent due to illness and provides a doctor's excuse she receives one occurrence for consecutive day absences.

The claimant was absent September 10, 2013 and received one occurrence. She clocked out at 9:59 p.m. instead of 10:00 p.m. on November 2, 2013 and received one occurrence, after the employer switched time keeping methods from a time clock to a finger swipe system. The time clock system utilized bell tones synchronized to the time clock to alert employees to break times and the end of their shift but the new finger swipe system did not have the synchronized bell tones. The claimant was absent November 12 and November 24, 2013 and July 13, 2014 for a

total of five occurrences. The claimant was absent July 17, 2014 because her fiancé cheated on her and stayed out all night and she was up all night crying, did not get any sleep, and had swollen eyes and a headache as a result. The employer was working a schedule of six to seven days per week and 10 hour days. The claimant received a written warning for her fifth occurrence July 13, 2014 and knew her employment would probably be terminated due to her July 17, 2014 occurrence when the employer started processing absences Wednesday or Thursday of the following week. The employer notified the claimant her employment was terminated July 24, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 claimant accumulated six occurrences between September 10, 2013 and July 17, 2014. All of her absences were properly reported. One of her six occurrences was the result of the claimant clocking out one minute early without realizing she was doing so. That leaves five occurrences in a time frame of nearly ten months. She had one occurrence in September 2013 and three occurrences in November 2013 and then did not accumulate any further occurrences until July 2014.

With the exception of the claimant's last absence, she does not recall the reasons for her absences. Although the employer issues written warnings following each occurrence, because the claimant's last absence prior to July 13, 2014 was November 24, 2013, and the employer runs approximately one week behind in issuing written warnings, the claimant did not realize she had five points prior to her last occurrence until she received the written warning for her July 13, 2014 absence July 18, 2014, the day after her final occurrence. .

Under these circumstances, the administrative law judge concludes the claimant's five full day occurrences, and one occurrence of one minute in duration, in ten months, and only two occurrences in the last eight months, does not rise to the level of excessive unexcused absenteeism or disqualifying job misconduct as those terms are defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 12, 2014, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying job misconduct. Benefits are allowed, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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