

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE J MOELLER
Claimant

APPEAL NO. 10A-UI-08412-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 05-02-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 9, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2010. The claimant did participate. The employer did participate through Monica Dyar, Human Resources Supervisor and Greg Lentz, Quality Assurance Supervisor. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a quality assurance technician full time beginning December 11, 2006 through May 7, 2010 when she was discharged. The claimant was discharged for taking excessively long breaks. She was to take a thirty minute and a twenty minute break during each work shift. On May 5, surveillance video illustrated the claimant in the cafeteria for a twenty-eight minute break instead of a twenty minute break and in the cafeteria for a thirty-two minute break instead of the thirty minutes she was allowed. The claimant had been warned three times in the past for taking excessively long breaks, including a suspension in January 2010. She knew that taking excessively long breaks was placing her job in jeopardy.

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.

871 IAC 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).

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. The employer has established that the claimant was warned that further unexcused absences, specifically excessively long breaks could result in termination of employment and the final excessively long breaks were not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 9, 2010 (reference 02) 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/css