

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY L WIPF
Claimant

APPEAL NO: 12A-UI-13812-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIONEER HI-BRED INTERNATIONAL INC
Employer

OC: 10/28/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 19, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Holly Bergman, a Human Resource consultant, and Cindy Devilbiss, an Administrative Supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2009. She worked as a full-time administrative assistant. The employer's written attendance policy informs employees that the employer expects employees to report to work as scheduled. Devilbiss became the claimant's supervisor after the claimant returned from her maternity leave in September 2011. The claimant's previous supervisor allowed the claimant a great deal of flexibility as to when she reported to work. Devilbiss expected the claimant to work as scheduled and if she was going to be late, Devilbiss told the claimant to call or text her.

After the claimant returned from maternity leave and she had problems getting to work by 8:00 a.m., the employer changed her start time to 8:15 a.m. in late November 2011. The employer changed the claimant's start time to 8:30 a.m. on January 9, 2012, because the claimant was still reporting to work late.

In January 2012, Devilbiss started documenting the days the claimant was late for work and did not notify Devilbiss that she would be late. Between January 9 and May 11, 2012, the claimant was late for work 18 times. The claimant did not contact Devilbiss that she would be late for work. The employer gave the claimant a written warning on May 11, 2012, for excessive

tardiness. Devilbiss told the claimant that if she was going to be late, she wanted the claimant to notify her.

After the May 11 warning, the claimant again reported to work late on May 14, 17, 20, 29 and 31. The employer did not note any problems with her attendance in June. The claimant did not have any attendance issues again until July 20. Between May 11 and September 17, the claimant was late for work 16 times and she did not notify Devilbiss that she would be late. On September 17, the employer gave the claimant her second written warning. This warning informed the claimant that if there were further problems she could be discharged. After receiving the second written warning, the claimant understood her job was in jeopardy and she could be discharged if she was late and did not contact the employer.

The claimant was eight minutes late for work on September 19. She did not notify the employer she would be late. The claimant was late for work on October 3 and 5 and again did not contact the employer that she would be late for work. On September 18, and October 1, the claimant notified the employer she would be late for work. Since the claimant continued to report to work late without notifying Devilbiss, on October 8, Devilbiss sent an email to the employer's Human Resource department asking if she could discharge the claimant for repeatedly failing to work as scheduled.

After October 8, the claimant continued to report to work late, five to seven minutes, and did not notify Devilbiss that she would be late. After Human Resource department gave Devilbiss authorization to discharge the claimant, the claimant was discharged on October 30, 2012.

The claimant was late the majority of the time because she got held up at the daycare she took her children to. Other times the claimant was late because she has a medical condition that prevented her from reporting to work on time. The claimant did not believe Devilbiss treated her fairly and did not agree with some of the times Devilbiss noted she was late. The employer does not have a time clock, but Devilbiss knew when the claimant reported to work because she worked behind Devilbiss.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The evidence indicates the employer tried to accommodate the claimant and changed her start time from 8:00 a.m. to 8:30 a.m. The claimant testified the majority of the time she was late was because of childcare or daycare issues. There is no evidence what steps the claimant took to make sure she was not delayed at the daycare and reported to work on time. The claimant had no explanation why she had no attendance problems in June or the first part of July 2012. The claimant felt Devilbiss treated her unfairly, but even after the claimant received the May 11 written warning she failed to notify Devilbiss when she would be late for work. After the claimant received her second written warning on September 17, she notified the employer two times that she would be late. But there were seven times since September 17 she was late for work without notifying the employer.

The claimant's repeated failure to report to work by 8:30 a.m. and to notify Devilbiss when she would be late amounts to an intentional and substantial disregard of the employer's interests and her supervisor's instructions. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 28, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 19, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 28, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll