

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH L CLARK
Claimant

APPEAL NO. 09A-UI-16295-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC
Employer

**Original Claim: 12/28/08
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 22, 2009, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 3, 2009. The claimant participated. The employer participated by Robin Beech Travis, human resources manager. The record consists of the testimony of Robin Beech Travis, the testimony of Deborah Clark, and the testimony of Ron Moran.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a confectionary manufacturer. The plant where the claimant worked is located in Creston, Iowa. The claimant was initially hired on January 14, 2008. Her last day of work was October 2, 2009. Her date of termination was October 5, 2009. The claimant was a packaging machine operator on the "C" shift, which is the night shift.

The claimant was terminated for violation of the employer's attendance policy. The employer has a no fault attendance policy that calls for termination after an employee reaches eight points within a rolling nine month calendar. The claimant reached nine points by being a no-call, no-show for the Sunday night—October 5, 2009 shift. The claimant's truck had broken down on the interstate. She did not call her employer to report her absence. She was assessed two points for the no-call, no-show. She had been at seven points before the no call, no show.

The claimant's previous points were accumulated as result of tardiness, leaving early, and being absent. The period in which these points were accumulated ran from June 1, 2009 to October 5, 2009. One point was accumulated for illness and the claimant had a doctor's excuse for her absence. The claimant was not certain why she was absent on other occasions, but

speculated that she might have been sick. She did not know why she left early, but attributed her tardiness to working another job and having mandatory overtime that prevented her from showing up on time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Misconduct that leads to disqualification from receiving unemployment benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Jobs Service, 350 N.W.2d 187 (Iowa 1984) Absence due to matters of "personal responsibility", e.g. transportation problems, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notified the employer. See Higgins, supra, and 871 IAC 24.32(7). Absenteeism includes tardiness and leaving early.

The evidence in this case established that the claimant had excessive unexcused absenteeism. The claimant knew that the employer had an attendance policy that called for termination if eight points were accumulated. Between June 1, 2009, and October 5, 2009, the claimant had nine points, including a no-call, no-show on October 5, 2009. The claimant did not come to work because of transportation problems, which is unexcused absence under Iowa law. Although one of the claimant's points was due to illness, the rest were due to being late or leaving early

and other unexplained absences. Even if some of the other unexplained absences were due to illness, the majority of the claimant's points were due to leaving early or being late or, in the final instance, being a no-call, no-show.

The employer has carried its burden of proof to show misconduct. Benefits are denied.

DECISION:

The representative's decision dated October 22, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw