

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TABATHA J HOWARD
Claimant

APPEAL NO. 12A-UI-07171-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"SLB OF IOWA LC
Employer

OC: 05/20/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 8, 2012, reference 01, which denied unemployment insurance benefits finding the claimant was discharged for excessive absenteeism and tardiness after being warned. After due notice was provided, a telephone hearing was held on July 11, 2012. Claimant participated. Appearing as witnesses for the employer were Mr. Tom Reavis and Mr. Brian Krantz.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tabatha Howard was employed by the captioned employer, Panera Bread, from May 12, 2008 until May 22, 2012 when she was discharged for repetitive tardiness. Ms. Howard held the position of full-time catering coordinator and was paid by the hour. She was scheduled to work from 5:00 a.m. until 1:00 p.m. Monday through Friday. Her immediate supervisor was Brian Krantz.

Ms. Howard was discharged for repetitively being tardy and reporting to work after being warned. The claimant had been tardy in reporting to work on April 18, 19, 26, and 30 and was also late in reporting to work on May 3, 7, and May 16, 2012. Ms. Howard had been verbally counseled about her lack of punctuality and had received a warning on May 17, 2012. Ms. Howard did not report for her 5:00 a.m. shift on May 18, 2012, and did not call in until 6:45 a.m. that morning. The claimant was aware that the employer was concerned about her lack of punctuality as an early morning worker. Based upon the claimant's history of repeated tardiness and the previous warning that had been served upon the claimant, a decision was made to terminate Ms. Howard from her employment.

A warning for a previous tardiness that occurred on May 11, 2012 was also presented to the claimant at the time of her termination on May 22, 2012.

It is the claimant's position that she was ill on May 18, 2012. Employees are expected to notify the employer as soon as possible of their inability to report for scheduled work. Early morning shift workers are expected to call the baker on duty as soon as possible to report that they will be late or absent. Ms. Howard gave no reason for her absence on her last occurrence.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In this matter, Ms. Howard was warned on May 17, 2012 about her excessive tardiness and she again failed to report in a timely fashion the following morning and did not provide timely notice to her employer that she would be late or unable to report. Based upon the claimant's history of repetitive tardiness and the warning that had been served upon the claimant the preceding day, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Ms. Howard was discharged under disqualifying conditions. The claimant has presented no medical documentation supporting her position that she was too ill to provide timely notification to her employer, and did not state illness as her reason when she called in late on her last day. Benefits are withheld.

DECISION:

The representative's decision dated June 8, 2012, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs