

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ELISE R CRAIG**  
Claimant

**FERRARA CANDY COMPANY**  
Employer

**APPEAL 14A-UI-09913-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 22, 2014 (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 4, 2014. Claimant participated. Employer participated through Robin Travis, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a packer-one on the A shift beginning on January 14, 2013 through August 26, 2014 when she was discharged. The claimant had been given a copy of the employer's attendance policy and had demonstrated an ability to properly report her absences in the past. As of August 15 the claimant had used up all of her personal time. Once an employee reaches eight points they are discharged. The employer keeps track on a rolling twelve-month calendar so that points fall off after one year.

On May 7 the claimant refused an overtime requirement earning her one point. She missed work on December 13 and 14, 2013 earning two more points for a total of three. On August 18, 2014 she missed work bring her total accumulated points to four. She was off work on preapproved vacation time on August 19 and 20. She was scheduled to work one-half day on August 21 but called in late to report she would be absent earning her one and one-half points for a total of five and one-half points. She was to work a half day on August 22 but did not call in or show up for her shift earning her two points for a total of seven and one-half points. On August 26 she was to work at 7:00 a.m. and knew that if she was going to be absent she was required to notify the employer one hour prior to the start time of her shift. She did not report her absence to the automated system until 6:31 a.m. resulting in the accumulation of one and one-half points due to a late call in bringing her total to nine points. She was discharged

under the employer's attendance policy. The claimant had been out of town on vacation during the week and did not have enough vacation time to cover her absences and had no personal time to use either. The claimant was responsible for keeping track of her available leave time. The claimant missed work to take her vacation. Her absences were not excused under the employer's policy.

### 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.

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). Absences due to **properly reported** illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

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 knew the policy and knew or should have known that when she reached eight points under the policy she would be terminated from employment. The claimant's final absences were not excused. The final absences, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The September 22, 2014 (reference 04) 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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