

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VASHARA Y NEWTON WEBER
Claimant

APPEAL NO. 12A-UI-08931-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PALMER COMPANIES INC
PALMER CONSULTING**
Employer

**OC: 06/17/12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 17, 2012 (reference 03) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 17, 2012. Claimant participated. Employer participated through Account Executive Megan Culver.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a temporary administrative assistant in the legal department at Wellmark Blue Cross Blue Shield from May 4, 2011 and was separated from the assignment and the employment on June 17, 2011. She was reprimanded about attendance and said she could not report to work because she had too many things going on. Her last absence was related to being tardy after having overslept. She had a final warning about attendance on June 7, 2011. She has not worked since then.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. In spite of Culver's inconsistent testimony from the fact-finding interview notes, the employer has established that claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 17, 2012 (reference 03) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw

NOTE TO EMPLOYER:

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Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v=mpCM8FGQoY>