

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MEGAN A PEARSON**  
Claimant

**HORMEL FOODS CORPORATION**  
Employer

**APPEAL NO. 14A-UI-09989-GT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/31/14  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 19, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 14, 2014. Claimant participated personally. Employer participated by Erin Montgomery, Plant Controller. Employer's Exhibits One through Four and Claimant's Exhibit A were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 3, 2014.

Employer discharged claimant on September 3, 2014 because she violated employer's attendance policy.

Claimant was given a warning about her absences from work on August 26, 2014, August 27, 2014, and August 28, 2014. These warnings were given for absences that occurred much earlier in the year beginning on April 25, 2014. Claimant's termination or third strike under employer's policy occurred because of absences that occurred August 11, 2014, August 22, 2014, and August 25, 2014. Claimant was given her first warning on August 26, 2014. She was not absent again up until her date of termination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. At least one of claimant's absences was for illness and should have been excused.

The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Claimant was not given warnings until

August 26, 2014. She was terminated for an absence that occurred on August 25, 2014. She was not given an opportunity to modify her behavior and comply with employer's policy, and after her first warning that occurred of August 26, 2014 there were no additional acts of misconduct. Accordingly, benefits are allowed.

**DECISION:**

The decision of the representative dated September 19, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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