

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER K VAN BLARICUM
Claimant

APPEAL NO. 07A-UI-10959-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUNN-O-MATIC CORP
Employer

**OC: 09/30/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Jennifer Van Blaricum filed an appeal from a representative's decision dated October 23, 2007, reference 01, which denied benefits based on her separation from Bunn-O-Matic Corporation. After due notice was issued, a hearing was held by telephone on December 12, 2007. Ms. Van Blaricum participated personally. The employer participated by Richard Fries, Human Resources Manager.

ISSUE:

The first issue is whether Ms. Van Blaricum's appeal should be deemed timely filed. If it is found to be timely, the issue then becomes whether Ms. Van Blaricum was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Ms. Van Blaricum at her address of record on October 23, 2007. She had already received a decision from Workforce Development dated October 15, 2007 concerning a different employer. The decision of October 15 allowed benefits. Ms. Van Blaricum believed she would be receiving benefits from the employer identified in the October 15 decision but not from Bunn-O-Matic. Because she believed she would still get benefits, she did not appeal the disqualification regarding Bunn-O-Matic by the November 2, 2007 due date. She contacted her local office when she had not received benefits for an extended period and was told that the determination regarding Bunn-O-Matic was the reason she was not receiving benefits. Workforce Development did not send her a letter advising of the net effect of the two contradictory decisions. Ms. Van Blaricum filed an appeal on November 27, 2007.

Ms. Van Blaricum was employed by Bunn-O-Matic from September 18, 2006 until October 1, 2007 as a full-time assembler. She was discharged because of her attendance.

Ms. Van Blaricum was absent for personal reasons on January 5, February 8, May 26 and 27, and June 6, 2007. She received a verbal warning on April 5 and her first written warning on May 1, 2007. She was given another written warning and suspended for three days on June 8 because of her attendance. Ms. Van Blaricum was late reporting to work on July 2, August 15, August 27 and September 4, 2007. Her final warning was on September 6, 2007. The decision to discharge was prompted by the tardiness of October 1 when she was two hours late because of car problems. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

For reasons that follow, the administrative law judge concludes that Ms. Van Blaricum's appeal filed on November 27, 2007 should be deemed timely filed. She reasonably assumed that she would be receiving benefits based on the decision dated October 15, 2007 that allowed benefits. Therefore, her decision not to appeal the decision concerning Bunn-O-Matic was reasonable. Ms. Van Blaricum acted with due diligence in filing an appeal once she was notified by her local office that she would not be receiving benefits because of the October 23, 2007 disqualification. For the above reasons, the appeal is deemed timely filed as required by Iowa Code section 97.6(2). Therefore, the administrative law judge has jurisdiction over the separation issue.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Absences due to personal reasons or personal responsibilities, such as transportation, are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Van Blaricum had five absences in 2007 that were reported to be for personal reasons. Because they were for personal reasons, they are unexcused. She also had four periods of tardiness prior to the tardiness of October 1. Inasmuch as the evidence does not establish any reasonable cause for the tardiness, it is likewise unexcused.

Ms. Van Blaricum had received two warnings and a suspension in 2007 because of her attendance. In spite of the warnings, she did not take those steps necessary to conform her attendance to the employer's expectations. The final period of absence, the tardiness of October 1, is unexcused as it was due to a transportation issue. Ms. Van Blaricum had already reported to work late on four occasions during the prior three months and had been absent for personal reasons five times during the year. Had she not accumulated the prior occasions of tardiness and personal absences, the administrative law judge might be inclined to view the tardiness of October 1 as excused given the unexpected nature of it.

The evidence of record establishes ten periods of unexcused absenteeism during calendar year 2007. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 23, 2007, reference 01, is hereby affirmed. Ms. Van Blaricum was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css