

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA D RANDALL
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL 15A-UI-04488-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/28/14
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 April 1, 2015, (reference 03) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2015. The claimant participated with Hatti Holmes of Legal Aid. The employer participated through Mitzi Tann. Employer Exhibits One through Five were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a finishing toe line specialist and was separated from employment on March 2, 2015, when she was discharged (Employer Exhibit Four).

The employer's attendance policy allows three unexcused attendance points in a rolling six-month period. A tardy is worth one half point and the employer's policy does not permit a grace period to be clocked in for a shift (Employer Exhibit One). The claimant had previously been counseled for her attendance and tardiness on January 19, 2015 (Employer Exhibit Three), November 25, 2014 and September 9, 2014. The claimant also was on FMLA for anxiety related illness, but absences related to FMLA were not taken into consideration or counted against the claimant in the decision to discharge.

The claimant was scheduled to work at 6:30 a.m. and was tardy to work three times in her final week of employment. The claimant was late February 23, 2015 and clocked in at 6:31 a.m. The claimant testified she was late due to weather. The claimant was late on February 26 and 27 and clocked in at 6:31 a.m. and 6:32 a.m. due to delays in her personal transportation to work. She was subsequently discharged.

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.

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. Excessive absences are not considered misconduct unless unexcused. 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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 this case, the claimant was warned in January 2015, and in September and November 2014 about her attendance. The employer has credibly established that claimant was warned that further unexcused tardies or absences could result in termination of employment and the final three tardies were not excused. Further, recognizing that her job was in jeopardy, the claimant could have planned for an extra few minutes to make sure she was not tardy. The final tardy, in combination with claimant's history is considered excessive. Benefits are withheld.

DECISION:

The April 1, 2015, (reference 03) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs