IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KEFFANY M MOLINA
Claimant

ALLSTEEL INC
Employer

APPEAL NO. 10A-UI-05343-S2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/24/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allsteel (employer) appealed a representative's March 29, 2010 decision (reference 01) that concluded Keffany Molina (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 25, 2010. The claimant participated personally. The employer was represented by Deniece Norman, Hearings Representative, and participated by Cherie McClusky, Member Community Relations Manager, and Dennis Thumann, Group Leader.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 1, 2003, as a full-time utility, grade three. The claimant signed for receipt of the employer's handbook on October 1, 2003, and again on November 2, 2004. The claimant understood that she would be issued a verbal warning if she had four attendance points, a written warning if she had two more attendance points, and termination if she had four additional attendance points. She understood that she would accumulate one attendance point if she were absent for two consecutive days. The employer issued the claimant a verbal warning on December 10, 2009, after she accumulated four attendance points for five absences or tardies. The employer thought it issued the claimant a written warning on February 24, 2010, for attendance issues, but the claimant never received it. She understood that she would have to have additional absences beyond a written warning before she could be terminated.

The claimant properly reported her absence on February 25, and 26, and March 1, and 2, 2010, because her ex-mother-in-law was in hospice without a skilled care giver. On March 3, 2010, the claimant called the employer to return to work. The employer terminated the claimant on March 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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 Department of Job Service, 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 when and why the employee is unable to report to work. The employer has not provided sufficient evidence to establish that the claimant was warned that further unexcused absences could result in termination of employment. The employer was not sure the claimant was warned and the claimant does not remember ever receiving the written warning.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not sufficiently warned the claimant about the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The claimant’s absence does not amount to job misconduct. The claimant was discharged, but there was no misconduct.

DECISION:

The representative's March 29, 2010 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw