

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY SANDEN
Claimant

APPEAL NO: 09A-UI-03619-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

OC: 02-08-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 27, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 1, 2009. The claimant participated in the hearing with witness/Welder Lyle Burton. Kris Silvers, Human Resources Benefits Administration; Amy Reed, Human Resources Supervisor; and Michael Johnson, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time rotary file for Wellman Dynamics from April 7, 2008 to February 7, 2009. The employer's attendance policy changed with the union contract December 15, 2008, and all employees started with a clean attendance record at that time. The policy states that seven unexcused full absences and seven unexcused partial absences would result in a written warning. The eighth, ninth and tenth would result in written warnings and the eleventh would result in termination. The claimant had full absences December 29 and December 31, 2008; January 10, 12, 16, 28, 29, 30, 2009, and February 3, 6 and 7, 2009. She had partial absences of four hours or less December 19, 2008, and January 14 and 15, 2009. The employer issued written warnings to the claimant January 30, February 3, 6 and 7, 2009, but because the claimant was not at work during that time the employer mailed her warnings and termination notice by certified mail February 12, 2009. The claimant agreed with the dates of absences and stated some absences were due to illness but many were due to stress caused by perceived harassment. She considered it harassment if she would leave her area to use the restroom or if she was frustrated and left her area to walk around and other employees reported her absences from her area to the supervisor. The claimant was never disciplined for being away from her area. Her last absence occurred as a result of forgetting February 7, 2009, was a mandatory Saturday work day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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). The claimant accumulated 11 full absences and three partial absences between December 29, 2008 and February 7, 2009. While some of her absences were due to illness, many were due to the stress from the harassment she believed she was experiencing. The administrative law judge cannot conclude that the claimant was being harassed even though she objected to her co-workers reporting her absences from her area to the supervisor. Although she was disturbed by their conduct it does not rise to the level of harassment. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The February 27, 2009, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs