

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE QUINTANILLA
Claimant

APPEAL NO: 15A-UI-02132-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 01/04/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 22, 2015, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 17, 2015. The claimant did not respond to the hearing notice by providing a phone number where she could be reached at the date and time of the hearing as evidenced by the absence of her name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Turkessa Newson, Human Resources Generalist, 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 customer service representative for APAC Customer Services from May 12, 2014 to December 18, 2014. She was discharged from employment due to a final incident of absenteeism that occurred on December 16, 2014.

The employer uses a no-fault, point based attendance policy and employees are discharged upon reaching 12.5 points in a rolling calendar year. Employees are assessed one point for a full day absence; an incident of tardiness of less than two hours is assessed one-half point; an incident of tardiness of more than two hours is assessed one point; and a no-call no-show absence is assessed two points.

The employer issues employees a verbal warning in writing for accumulating five and one-half points to nine and one-half points; a written warning for accumulating ten points; a final written warning for accumulating ten and one-half to 11 points; a second final written warning for accumulating 11.5 to 12 points; and employment is terminated when the claimant reaches 12.5 points. Points drop off after six months.

The claimant received a written verbal warning July 17, 2014, for accumulating one point. She already had one-half point (date and absence unknown) and was credited with a total of one and one-half points in the warning of July 17, 2014. She received a written verbal warning July 26, 2014, for leaving early July 25 and July 26, 2014. On one of those days the employer believes she left more than two hours early and was consequently assessed one point for that absence, and one-half point for the other, for a total of three points. She received a written warning August 9, 2014, after leaving early and being assessed one-half point August 2, 2014 and being absent August 7, 2014, and being assessed one point for a total of four and one-half points. The claimant received a verbal warning in writing after she left early and was assessed one-half point August 19, 2014. She was absent and was assessed one point and received a verbal warning in writing September 6, 2014, for a total of six points. She received a verbal warning in writing September 25, 2014, after leaving early and being assessed one-half point each for September 18, 19 and 22, 2014, for a total of seven and one-half points. The claimant received a verbal warning in writing October 17, 2014, after she was tardy and received one-half point October 6, 2014, and left early and received one-half point October 7, 2014, for a total of eight and one-half points. She received a verbal warning in writing November 6, 2014, after she was tardy November 6, 2014, and received one-half point for a total of nine points. On December 13, 2014, the claimant was absent and received one point for a total of ten points. On December 16, 2014, the claimant was a no-call no-show and received two points for a total of 12 points and her employment was terminated December 18, 2014.

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 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 employer has established that the claimant had 12 points at the time of termination rather than the 12.5 points required prior to termination occurring under the employer's attendance policy. The employer did not know the source of the claimant's first one-half point and also added an additional one-half point to her total prior to the August 9, 2014, written warning. Additionally, the claimant never received a final written warning before her employment was terminated. While the claimant did accumulate several absences, she did not reach the required number of points before the employer terminated her employment. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 22, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs