

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE LALA
Claimant

APPEAL NO: 13A-UI-05875-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS CARDELLA & ASSOCIATES INC
Employer

OC: 08/12/12
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 May 6, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 25, 2013. The claimant participated in the hearing. Dylan Hutton, Center Manager and Robin Moore, 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 customer care agent for Thomas Cardella & Associates from August 23, 2012 to April 18, 2013. She was discharged from employment due to a final incident of absenteeism that occurred on April 12, 2013.

The employer's attendance policy allows four occurrences within a rolling 90-day period. Once an employee reaches four points, she is reviewed for termination of her employment. At the time of termination in this case, the claimant had 14 occurrences. The employer allowed her to continue at some point because she stated her child was ill and some absences were due to weather conditions.

The claimant was absent January 30, 2013, and received one occurrence; she was tardy due to the weather January 31, 2013, and received one-half occurrence; she was ill February 11 and 12, 2013, and received one occurrence for each day; she left more than four hours early February 15 and March 4, 2013, and received one occurrence for each day; she was absent due to personal reasons March 5, 2013, and received one occurrence; she left more than four hours early March 11, 2013, and received one occurrence; she was absent due to personal reasons March 12 and March 18, 2013, and received one occurrence for each day; she left early after working more than four hours and received one-half occurrence March 27, 2013; she

was tardy less than four hours and received one-half occurrence for each day April 1, 2, 3 and 9, 2013; and she was absent April 11 and 12, 2013, and received one occurrence for each day for a total of 14.5 occurrences.

The claimant received three final written warnings, the last February 20, 2013, written warnings in August and December 2012; and verbal written warnings in August and December 2012.

There is no evidence that these absences were related to illness. The employer asked the claimant just prior to her termination whether she and/or her son were ill April 11 and 12, 2013, and she stated they were not.

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 14.5 occurrences between January 30 and April 12, 2013. She told the employer she or her child were ill on two of those occasions but left early four times and was tardy five times in addition to five absences due to personal reasons and one due to the weather. While the claimant stated during her testimony that her last absence was due to the illness of her child, the employer specifically asked her, prior to her discharge, if her absences April 11 and 12, 2013, were because of illness and the claimant said no.

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. Therefore, benefits must be denied.

DECISION:

The May 6, 2013, reference 03, 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/css