

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHETIGRA N TROUPE

Claimant

DAC INC

Employer

APPEAL 15A-UI-06831-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/15

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 5, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2015. Claimant participated. Employer participated through human resource assistant Jill Kent. Employer exhibits one through three were admitted into evidence with no objection. Employer exhibits four and five were not admitted into evidence; claimant had not received these exhibits and claimant's objection was sustained.

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: Claimant was employed part-time as a direct support professional from December 1, 2014, and was separated from employment on February 16, 2015, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardiness. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving eight points. Claimant was made aware of the employer's attendance policy. Employer Exhibit 1 and 2. Claimant was also made aware of the proper procedure for notifying the employer if she was going to be absent from work. Employer Exhibit 1 and 2. Claimant was also trained on the attendance policy by Ms. Kent. Employees earn paid time off immediately, but are not able to use the paid time off until after they have worked for 90 days. Claimant's 90th day was March 1, 2015.

The final incident occurred when the claimant missed her shift on February 15, 2015. The employer assessed points against claimant for not following the appropriate call-in procedure. Employer Exhibit 3. Claimant testified that she did follow the appropriate call-in procedure. Claimant was absent because of a problem with her wisdom teeth. Claimant did not provide the employer with a doctor or dentist note. Claimant received additional points for not having paid time off available to use for the absence.

On January 26, 2015, claimant was late (tardy) for work. Claimant received points for being tardy and not having paid time off to cover the tardy, pursuant to the employer's attendance policy. Employer Exhibit 1 and 3. On January 28, 2015, the employer notified claimant she was being suspended for three days, unpaid, for accumulating too many points as a part of the employer's progressive discipline procedures. Employer Exhibit 3. Claimant served her unpaid suspension February 4, 2015, February 5, 2015, and February 6, 2015. Claimant was notified when she was suspended that further attendance policy violations may result in termination.

On January 12, 2015, claimant was late (tardy) for work. Claimant received points for being tardy, not following the call-in procedure, and not having paid time off to cover the tardy, pursuant to the employer's attendance policy. Employer Exhibit 1 and 3. On January 9, 2015, claimant was late (tardy) for work. Claimant received points for being tardy, not following the call-in procedure, and not having paid time off to cover the tardy, pursuant to the employer's attendance policy. Employer Exhibit 1 and 3. Claimant did not receive any written warning or suspension for the January 9th and January 12th incidents because they happened too quickly in relation to the January 26, 2015 incident. Claimant testified her tardiness incidents were all weather related.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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). 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.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. This administrative law judge reviewed the exhibits submitted by the employer. This administrative law judge finds the Employer's version of events to be more credible than the Claimant's recollection of those events.

Claimant was aware the employer had an attendance policy. Employer Exhibit 2. When an employee is suspended from work for multiple days, this is a clear indication that the employee's job is in jeopardy. Claimant was aware her job was in jeopardy after she was notified on January 28, 2015 she was being suspended for attendance issues. Absences related to the weather are not considered excused.

Claimant was aware her job was in jeopardy, and required to make the necessary arrangements to be at work on time. Claimant never provided the employer with any doctor's note to excuse her from work on February 15, 2015. The employer has credibly established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence on February 15, 2015, was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 5, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:
<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>