

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHYLLIS BALDRIDGE
Claimant

APPEAL NO: 12A-UI-00079-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 11-27-11
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 December 23, 2011, 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 February 1, 2012. The claimant participated in the hearing. Kirstie Horton, Human Resources Associate, 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 production worker for Cargill Meat Solutions from March 4, 2008 to November 28, 2011. The employer considered her to have voluntarily quit her job after she failed to call in or show up for work November 24, 25 and 26, 2011. The claimant exhausted her intermittent Family and Medical Leave (FML) May 29, 2011. She worked off and on until July 1, 2011. She had a doctor's excuse covering her absence until October 15, 2011, at which time she was released to return to work without restriction. The claimant did not feel she was ready to return to work because she was on several medications but her physician believed she could return to work while on the medications. The claimant stayed home, calling in every day to report her absences, while she weaned herself off her medications. She provided the employer with her doctor's excuse from August 15, 2011, on October 14, 2011, when she met with human resources and the employer instructed her to return to her physician to get a note covering her absences between August 15 and October 14, 2011. The claimant had an appointment with her doctor October 19, 2011, but she refused to excuse her absence because she felt the claimant could have been working while on her medications. The claimant went to talk to the employer October 20, 2011, but could not get into the plant and was unaware there is a phone there so employees who forget their time cards or badges can call the guard shack. The claimant continued to call in until November 24, 2011, at which time she stopped, assuming her employment was terminated. Because the claimant did not call in to report her

absences November 25 or 26, 2011, either, the employer determined she voluntarily quit her employment. There is no evidence that the absences between August 15 and November 26, 2011, were related to illness.

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 § 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). While the claimant was not comfortable working when taking her medications, her physician released her to return to work August 15, 2011, believing the claimant was capable of performing her job while on medication and refusing to write the claimant a note covering her absences between August 15 and October 19, 2011. Consequently, those absences cannot be considered excused and the claimant exceeded the allowed number of attendance points. 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 December 23, 2011, 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