

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARMISHIA D JOHNSON
Claimant

APPEAL NO. 11A-UI-13212-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 09/11/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the October 3, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 31, 2011. Claimant participated. Employer participated through Coralville Store manager Kelle Aiken and was represented by Heather Cichon of Xchanging/Cambridge.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production clerk and was separated from employment on September 15, 2011. She was last absent on September 10 when she was tardy. She had approval to report at 12:30 p.m. because she was going to the cemetery to visit her son's and cousin's graves. She called the manager on duty Michael shortly before then and said she would be late because she got blocked in at the cemetery because of the crowd there for the funeral of a boy who had died in a fire. Michael said, "Okay, I'll see you when you get here." She arrived at 2:00 p.m. She had been warned about attendance on March 2, 2011 and was suspended for a day. The employer warned her in writing about attendance on February 24, 2011 and verbally on February 10. She was absent on October 22, November 6 and 7 absent, 19 tardy, 26 tardy, December 3 tardy, 6 tardy, 20 absent, and 28, 2010 left early, February 6 left early, 7 absent, 22 no-call/no-show, and 26, 2011 absent. The employer has a no-fault attendance policy and does not necessarily record the reasons for the absence. Most of her absences were related to illness of one of her five children. Sometimes her children were not placed on the school bus so she had to leave early to pick them up. Michael did not participate in the hearing.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. Since the claimant had permission from her supervisor to arrive late to work on September 10 and she was further delayed by funeral traffic, the employer has not established a current act of unexcused absenteeism or misconduct. Benefits are allowed.

DECISION:

The October 3, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css