

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DOROTHY D SHUMAKER**  
Claimant

**APPEAL NO: 18A-UI-07555-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCSG CENTRAL LLC**  
Employer

**OC: 06/10/18  
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 July 11, 2018, 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 August 1, 2018. The claimant participated in the hearing. Lyle Scheel, Supervisor and John Hermann, District Manager, participated in the hearing on behalf of the employer. Employer's Exhibit 1 was admitted into evidence.

**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 part-time dietary aide for HCSG Central from November 16, 2007 to May 7, 2018. She was discharged from employment due to a final incident of absenteeism that occurred on May 6, 2018.

The employer uses a point-based attendance policy and employees are discharged upon reaching 20 points. An incident of unexcused absenteeism is assessed five points. Employees must call in two hours before the start time of their shift to report their absence and try to find a replacement. If they fail to call two hours prior to the start of their shift or do not have what the employer determines to be a "good reason" for their absence it is considered unexcused.

The claimant had an unexcused absence January 1, 2018, and stated she went to the hospital; she had an unexcused absence January 2, 2018, because she did not call at least two hours prior to the start time of her shift, find a replacement, or provide a doctor's note stating she was in the hospital; she had unexcused absences March 11, March 13, March 14, March 16, March 17, March 19, March 20 and March 21, because she said her sister was in the hospital in Chicago after she returned without calling in at least two hours prior to the start time of her shifts or arranging a leave of absence; she had an unexcused absence March 26, 2018, because she did not call at least two hours prior to the start time of her shift; she had unexcused absences

April 8, April 9, and April 23, 2018, because she did not call at least two hours before the start time of her shift; she had an unexcused absence April 24, 2018, because she left two hours early without permission of the shift leader; and the claimant had unexcused absences May 5 and May 6, 2018, because she did not call at least two hours prior to the start time of her shift. The claimant stated she was ill May 5 and 6, 2018, and indicated she had a doctor's note. The administrative law judge left the record open until the end of the day August 1, 2018, so the claimant could provide the note but she did not do so.

The employer verbally warned the claimant January 3, 2018, that her absences could not continue; issued her a documented counseling March 22, 2018, issued her a written warning March 27, 2018, that was signed by the claimant; and issued her a final written warning June 26, 2018, that was signed by the claimant (Employer's Exhibit 1).

The employer notified the claimant May 7, 2018, her employment was being terminated. The employer told the claimant she could contact human resources and she would be suspended pending investigation, but the claimant failed to contact human resources about her termination. The claimant returned June 26, 2018, to question her employment status and the employer gave her the final written warning at that time and reaffirmed that her employment was terminated.

#### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 claimant accumulated 16 unexcused absences as a part-time employee between January 1 and May 7, 2018. She was absent nine times in March 2018 alone and after the fact stated her sister was ill in Chicago and she was with her. The claimant did not ask for a leave of absence or tell the employer why she was gone; instead she led the employer to believe she was ill but did not provide a doctor's note for either herself or her sister.

The claimant denied most of her absences but did not document when she was gone as the employer did. The claimant also denied receiving the written warning and final written warning when she clearly signed those documents. Finally, the claimant stated she had a doctor's note covering her May 5 and May 6, 2018, absences but when the administrative law judge gave her the opportunity to provide that note she failed to do so. The claimant's testimony was not as credible and persuasive as that of the employer.

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 are denied.

**DECISION:**

The July 11, 2018, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs