

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER MCKINNEY
Claimant

FIVE STAR QUALITY CARE INC
Employer

APPEAL NO: 13A-UI-09030-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/07/13
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 31, 2013, 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 September 10, 2013. The claimant participated in the hearing. Diana Hartman, DON, participated in the hearing on behalf of the employer. Employer's Exhibit One 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 full-time restorative aide for Five Star Quality Care from May 25, 2010 to July 12, 2013. She was discharged from employment due to a final incident of absenteeism that occurred July 10, 2013. The claimant received a verbal warning July 20, 2011, after accumulating four absences and six incidents of tardiness; she received a written warning March 22, 2013, after accumulating four absences and 18 incidents of tardiness; she received a final written warning June 14, 2013, after accumulating three absences and 13 incidents of tardiness; and was discharged from employment following a final incident of improperly reported absenteeism July 10, 2013, when she called the employer 30 minutes before the start time of her shift rather than the required two hours before the start time of her shift. The employer made the decision to terminate the claimant's employment after that incident and she was discharged July 12, 2013.

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 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. While the claimant indicated she did not feel well July 10, 2013, and believed she had another warning due her before termination would occur, she failed to properly report that absence by notifying the employer at least two hours prior to the start time of her shift. Consequently, the final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The July 31, 2013, 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/css

