

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICOLE A KNOP
Claimant

IDA GROVE HEALTHCARE LLC
Employer

APPEAL 14A-UI-12532-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/02/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 2, 2014 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2014. Claimant participated. Employer participated through (representative) Mike Turpin, Administrator, and Kristen Behrendsen, Director of Nursing.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a social worker beginning in May 13, 2013 and was separated from employment on October 30, 2014 when she was discharged. The claimant was discharged for repeated unexcused tardiness. Prior to Mr. Turpin even becoming the administrator in July 2014 the claimant had been given a final warning for attendance on March 3, 2014. She knew that continued unexcused absences could lead to her discharge. The claimant was specifically told by Mr. Turpin that her start time for work each day was at the latest 8:30 a.m. The claimant was expected to be at the standup staff meeting that started each day at 8:45 a.m. The claimant was late for work on July 21, 24, 25, 28, 31, August 4, 7, 8, 11, 12, 13, 28, September 3, 5, 8, 11, 12, 15, 25, October 3, 6, 9, 10, 17, 20, and 21. On October 20 the claimant did not call in to report that she would be late to work, nor did she arrive at work. The employer was concerned and called repeatedly to no avail as the claimant did not answer the telephone. Mr. Turpin and Ms. Gerhke drove to the claimant's house at about 9:30 a.m. and woke her up. The claimant indicated her alarm had not gone off. The claimant was discharged that day for excessive absenteeism in the form of repeated tardiness.

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.

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 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 2, 2014 (reference 02) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/can