

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRICIA M SANAGHAN
Claimant

APPEAL NO. 17A-UI-03368-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 02/26/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tricia Sanaghan (claimant) appealed a representative's March 17, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Allsteel (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 19, 2017. The claimant participated personally. The employer was represented by Malia Maples, Hearings Representative, and participated by Ryan Zeimet, Member Community Relations Business Partner. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 20, 2016, as a full-time work cell operator. The claimant signed for receipt of the employer's handbook on June 20, 2016. The employer has a no-fault attendance policy and terminates employees who accrue nine attendance credits within a rolling twelve month period. The employer also allows workers two non-pay/non-absence causing attendance passes per year. An attendance pass is not the same as a vacation day in the employer's handbook.

The claimant was running late and tardy on September 13 and November 22, 2016. The employer assessed the claimant 0.5 credits for each absence. The claimant properly reported all her absences. She was absent on July 25, October 25, 31, November 1, 2016, for medical issues. The claimant provided the employer with doctor's excuses for October 25, 31, and November 1, 2016. She is uncertain of the reason for her absence on November 12, 2016. On August 15 and 19, 2016, the claimant was absent because her father was in the hospital. The employer issued the claimant written warnings on October 25, November 1, and 12, 2016. The employer notified the claimant that further infractions could result in termination from employment.

On February 3 and 24, 2017, the claimant used her attendance passes. The claimant knew she was scheduled to work on Saturday, February 25, 2017. Previously a co-worker told the claimant if you took vacation on Friday, you did not have to appear for work on the Saturday after vacation. The claimant thought this policy also applied to the Saturday following the use of an attendance pass. She did not ask the employer for confirmation and the policy did not appear in the employer's handbook. The claimant did not appear for work or notify the employer of her absence on February 25, 2017. On Monday, February 27, 2017, the employer terminated the claimant for accumulated nine attendance credits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant had absences for different reasons. The absences for her own medical issues are not considered misconduct. The employer has established absences for tardiness and unknown causes. 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 representative's March 17, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs