IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SUSANNE M BRUMFIELD
Claimant

GIT-IN-GO CONVENIENCE STORES INC
Employer

APPEAL NO. 12A-UI-03084-ST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/05/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 19, 2012, reference 01, that held the claimant was not discharged for misconduct on February 10, 2012, and benefits are allowed. A hearing was held on April 11, 2012. The claimant participated. Melissa Shinn, Supervisor, participated for the employer. Employer Exhibits 1 – 14 were received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began employment December 9, 2008 and last worked as a part-time cashier on February 10, 2012. The claimant received the employer standards of conduct policy. It is a violation for failing or refusing to work a pre-assigned shift, absenteeism, or having a phone and transportation at all times. The employer also issued an employee handbook to claimant. It is a requirement to report an absence at least four hours prior to a work shift.

During the course of employment, claimant was issued employee consultation warnings from December 9, 2008 to February 10, 2012. Claimant did not receive any discipline for more than one year leading to January 2012 (circa September 15, 2010 to January 25, 2012).

The claimant was issued a written warning on January 25, 2012 for calling in sick on January 21. Claimant disputed the warning stating the absence incident had occurred more than two-weeks prior to the write-up, and she thought the issue had been resolved by her agreement to work a different shift. Claimant was issued a written warning on January 27 for work absences due to reported illness on January 24/25. Employer requested claimant to provide a doctor’s excuse and she complied for both days.

Claimant was scheduled to report for work on February 4. While returning to her residence, her car broke down and it had to be towed. The employer discharged claimant when she next reported for work on February 10 for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on February 10, 2012, for excessive “unexcused” absenteeism.

Although claimant had been issued some written discipline for attendance issues, she had a clean record for more than one-year leading to January 2012. The claimant refuted the January 21 absence at the time the January 25 warning was issued to her and in this hearing, and the employer witness did not know about it, as she was not involved. Claimant’s absences on January 24/25 were due to properly reported illness and she provided a doctor’s excuse. These January 2012 warnings are based on excused absences that are not misconduct.

While missing work due to transportation is not excusable per se, the circumstances of claimant’s car break-down do not show a deliberated disregard of the employer interest in claimant missing scheduled work. Given claimant’s more than one-year discipline-free attendance record leading to January 2012, and the failure of the employer to establish excessive “unexcused absences”, thereafter, job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated March 19, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on February 10, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs