

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL J ULLRICH
Claimant

APPEAL NO. 12A-UI-05022-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANCE PRIVATE BRANDS LLC
Employer

OC: 03/04/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 23, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 21, 2012. Claimant participated. Employer participated through Human Resources Generalist Amanda Mullins.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a packer on second shift (2 p.m. to 11 p.m.) and was separated from employment on April 4, 2012. She was last absent on April 2 due to “home duties,” which is anything other than sick time. On April 1, renters stole her property and the sheriff took her report between 10 a.m. and 11 a.m. On April 2, she went to the sheriff’s office and courthouse to fill out paperwork. She did not report for any portion of her shift, even after regular courthouse business hours on Monday, April 2. She had been warned in writing about absenteeism on March 4, March 24, and December 9, 2011. She was also absent on March 26 and April 1, 2012 because of “home duties.” All other absences were related to properly reported personal illness. Her absence on March 26 was because her daughter had a baby who had medical issues and was flown to Iowa City.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

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). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has established that claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused as she could have reported to work for her 2 p.m. shift after conducting her business with the sheriff's office and the courthouse in the morning. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 23, 2012 (reference 02) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw