

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KELLIE L CARNEY
Claimant

APPEAL NO. 18A-UI-11164-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/21/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kellie Carney (claimant) appealed a representative's November 9, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 30, 2018. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Kristi Schubert, Administrator. 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 September 9, 1996, as a full-time housekeeping supervisor working from 9:00 a.m. to 6:00 p.m. The claimant signed for receipt of the employer's handbook on January 12, 2017. The handbook contained the employer's attendance policy. The policy stated that an employee would be terminated if she had ten unscheduled occurrences in a twelve-month period. Two instances of tardiness constituted one occurrence. All supervisors were required to be present for a 9:00 a.m. question and answer meeting (QA) with the administrator, Monday through Friday.

The claimant was a good worker but she was late thirty to fifty percent of the time for the 9:00 a.m. QA. She was tardy nine times in February 2018 and fifteen times in March 2018. On March 1, 2018, the administrator issued the claimant a verbal warning for tardiness to the QA. She told the claimant that the meeting started promptly at 9:00 a.m. The warning covered tardiness on February 21, 22, 23, 27, 28, and March 1, 2018. The claimant was anywhere from four minutes to one hour and 55 minutes late. The employer notified the claimant that further infractions could result in termination from employment.

On March 26, 2018, the administrator issued the claimant a final written warning for not notifying the employer of her absence and then appearing for work one hour and fifty minutes late. The warning said, "You will be at QA by 9:00 a.m. daily – If not, you (sic) position will be terminated immediately."

On August 17, 2018, the administrator issued the claimant a written warning after the claimant sent a text at 9:10 a.m. saying she would be at work at 10:30 a.m. and did not appear at work until 11:17 a.m. The employer notified the claimant that further infractions could result in termination from employment.

On October 3, 2018, the administrator talked to the claimant about her attendance and why she did not appear for work on time. The claimant said, "I know, it might be the thrill. I don't know." The administrator told the claimant she did not want to have to terminate her. She asked the claimant if she wanted her to call her at 8:00 a.m. and wake her. The claimant refused the help, looked at the record of her tardiness and said, "I know. I'm sorry."

On October 4, 5, 8, 9, 10, and 11, 2018, the claimant clocked in four to six minutes late. On October 15, 2018, the claimant did not notify the employer of her absence and then clocked in for work one hour and twenty-one minutes late. She overslept. The administrator told the claimant that her supervisory role would be terminated but to return at 4:30 p.m. that same day to talk about work in a different department.

The administrator had a job available for the claimant with no change in pay, status, vacation, or seniority. She would work from 2:00 p.m. to 10:00 p.m. as a certified nursing assistant. The claimant did not appear at 4:30 p.m. on October 15, 2018.

At 6:11 p.m. on October 15, 2018, the claimant told the administrator she did not appear because she wanted to clear her head. The administrator allowed her to reschedule the appointment for 10:30 a.m. on October 16, 2018. The claimant agreed. At 12:37 p.m. on October 16, 2018, the claimant sent a text to the administrator, "Can we still meet later. I got drunk last night. Just getting around ugh." The administrator replied, "Lisa and I were willing to give you one more chance... however, 10:30 has come and gone...sorry!" The administrator terminated the claimant as of October 16, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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 on October 15, 2018, when the claimant overslept, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative’s November 9, 2018, 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