

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE D FARRELL
Claimant

LOWE'S HOME CENTERS INC
Employer

APPEAL 15A-UI-03756-KC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/08/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 20, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2015. The claimant participated. The employer participated through Jodi Allen, Human Resources Manager.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a customer service associate beginning on March 8, 2008, and was separated from employment on March 6, 2015, when she was terminated for excessive absenteeism after being warned.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on February 27, 2015. Prior to February 27, 2015, the claimant was tardy or absent on February 2 and February 14, 2015.

On September 5, 2014, she was last warned in writing that any future absences or tardiness would be reviewed with the possibility of termination at three incidents of attendance problems. The written warning addressed absence or tardiness issues that had occurred on three dates in July and August of 2014. She signed the written warning.

On February 2, 2015, the claimant called and spoke with manager Josh Wilson to report that she would be late. She called 15 minutes before she was supposed to be at work. The claimant was unable to get out of her driveway quickly because city snow plows had just come through and pushed snow into her driveway. The snow had fallen in the previous two days. The employer policy regarding being late or absent due to weather conditions is whether the National Weather Service identifies the roadways as unsafe to drive. The claimant was 20 minutes late to work.

On February 14, 2015, the claimant clocked into work at 2:20 p.m., although she was scheduled to be in place and ready to work at 2:00 p.m. She called work before the start of her shift, spoke with a manager either Josh or Curtis, and reported that she would be late because she was driving in from out of town. The employer policy, which the claimant acknowledged, provided that the employee should contact the employer two hours before a scheduled shift in the event of tardiness or absence. The claimant was aware of her scheduled start time.

On February 27, 2015, the claimant was running late and did not call the employer to report her tardiness. She testified that she was minutes late to report for work. She thought it would be better to drive to work than to take additional time to speak directly with a manager. The employer identified the tardiness on February 27, 2015 as the last straw.

The claimant understood from the written warning she received in September 2014 that further tardiness or absences could result in discharge. Thereafter, she had additional verbal warnings about attendance from Eric and Allen, managers to whom she reported directly.

The employer did not provide written documentation of the termination to the claimant until March 6, 2015 because the human resources staff that reviews attendance issues and the Chronos time-keeping system had not completed the evaluation until that date. The claimant was called to the office during her shift on March 6, 2015 and informed that her employment was terminated due to attendance and tardiness issues.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of

recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

The claimant's tardiness on three occasions in February 2015 were not excused absences. The claimant was informed in writing and in person in September 2014, and received verbal warnings thereafter, that further tardiness or attendance issues could result in termination.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance 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 credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The March 20, 2015, (reference 01) unemployment insurance 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs