

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANET P CORONA
Claimant

APPEAL NO. 13A-UI-03580-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
SCHENKER LOGISTICS INC PAYROLL
Employer

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 19, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 2, 2013. The claimant did participate. The employer did participate through Nicki Brick, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a forklift operator full time beginning August 18, 2008 through February 23, 2013 when she claimant was discharged from employment due to a final incident of absenteeism that occurred on February 21, 2013. The claimant was to work that day as a mandatory overtime. The claimant is not credible in saying that Jason Bauer told her she did not have to work. The claimant just did not want to work and did not show up. The claimant was last warned on January 14, 2013, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred as set out in Employer's Exhibit One.

REASONING AND CONCLUSIONS OF LAW:

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

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to 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, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Although failure to find a replacement does not, alone, render the absence unexcused, there is no information about the attempts to arrange for someone to fill in and there is no evidence the reported medical appointment was for anything other than a routine or prescheduled appointment. 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 because it was not for an illness, injury or other matter of an emergency nature. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The March 19, 2013 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css