

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH HARNAGE

Claimant

APPEAL 15A-UI-06718-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/10/15

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 2, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for repeated tardiness. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2015. Claimant Elizabeth Harnage participated on her own behalf. Employer Casey's Marketing Company participated through store Manager Troy Swisher. Claimant's Exhibit A was received and admitted into the record with no objection. Employer's Exhibit 1 was received and admitted into the record with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant store manager from January 2, 2012, and was separated from employment on May 14, 2015, when she was terminated. On May 13, 2015, the claimant was scheduled to start work at 2:00 p.m. The claimant was at the store at 1:00 p.m. and realized she had lost her mobile phone. She left the store to contact her service provider and search for her phone. She found her phone at 1:40 p.m. and contacted the store to notify store manager, Troy Swisher that she would be late to work. Swisher was not available and the claimant told a co-worker she was running late as she needed to contact her provider to notify it that she had found her phone. The claimant arrived at work at 2:14 p.m. The following day, Swisher confronted the claimant about her tardiness and told her she was terminated.

The claimant had previously been warned about absenteeism. She received a written verbal warning on March 2, 2015 for leaving in the middle of her shifts on February 28 and March 1. On April 21, 2015, she received a written warning for arriving late or leaving her shift early 13 out of 15 shifts worked between March 29 and April 20. The claimant explained that she was going through a divorce. She was notified any further infractions would lead to additional discipline up to and including termination. On May 12, 2015, Swisher and Area Manager Ron

Niermeyer spoke with the claimant and reminded her she needed to arrive for her shifts on time and work her entire shift.

The employer has an attendance policy in its employee handbook which is given to all employees upon hire and available any time in the store. The policy describes any absence or tardy that occurs without at least one-day notice and is not related to medical leave is considered unscheduled. Two or more unscheduled occurrences in a calendar year are considered excessive and are grounds for discipline up to and including termination.

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. Benefits are denied.

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).

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 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).

An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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 claimant’s absences related to finding her mobile phone and a divorce are issues of personal responsibility and are not considered excused absences. 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.

DECISION:

The June 2, 2015, (reference 01) unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/mak