

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE K SCHRODER
Claimant

APPEAL NO. 10A-UI-16785-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL CELLULAR INC
Employer

OC: 11/07/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Jacqueline K. Schroder filed a timely appeal from an unemployment insurance decision dated December 2, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held January 27, 2011 with Ms. Schroder participating. She presented additional testimony by Tami Langstraat. Barry DeJong participated for the employer, Central Cellular, Inc. Exhibits A and One were admitted into evidence.

ISSUE:

Was the claimant discharged for excessive unexcused absenteeism?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jacqueline K. Schroder was employed by Central Cellular, Inc. from August 18, 2008 until she was discharged September 29, 2010. The final incident leading to the discharge occurred when Ms. Schroder told the employer that she would be unable to attend a mandatory meeting on September 30, 2010 because she did not have child care. In addition to this incident, Ms. Schroder had been tardy on August 24 and August 31, 2010. On both occasions, her children had become ill suddenly. On August 24, Ms. Schroder had to pick up a child from school who had become ill. On August 31, 2010, a child had vomited in the car as Ms. Schroder was on her way to the child care provider. In both instances, Ms. Schroder notified the employer immediately and reported to work as soon as possible. Ms. Schroder was absent due to illness on August 17, 2010. She asked her daughter to contact the employer. The daughter did so by text message. The employer prefers that such notification be by telephone. The employer does not have a hard and fast rule on that matter, however.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for excessive unexcused absenteeism. It does not.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence because of matters of personal responsibility, such as child care, are deemed to be unexcused, whether or not proper notice is given. See Higgins and Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The administrative law judge concludes that the final incident was an act of misconduct because the claimant had ample opportunity, a minimum of 13 days, to make arrangements. A single unexcused absence, however, is not sufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). The absences on August 17, 24 and 31, 2010 were all due to illness, either the claimant's or a child's. While the claimant did not report her personal illness in the preferred manner, Mr. DeJong testified that he did not have a hard and fast rule that notification must be by telephone rather than by text message. On the other occasions, Ms. Schroder gave the employer as much notice as she could under the circumstances. The administrative law judge concludes that the August absences cannot be considered acts of misconduct. Since a single unexcused absence is not sufficient to establish excessive unexcused absenteeism, the administrative law judge concludes that benefits must be allowed.

DECISION:

The unemployment insurance decision dated December 2, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs