

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LAURIE J CUSTER
BOX 194
BRED A IA 51436

GRAPHIC EDGE INC
PO BOX 586
CARROLL IA 51401

Appeal Number: 05A-UI-03370-JTT
OC: 03/06/05 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Laurie J. Custer filed a timely appeal from the March 25, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 20, 2005. Ms. Custer participated in the hearing. Peg Sanders, Human Resources Director, represented the employer and presented additional testimony through Jean Ahart, Supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laurie J. Custer was employed by Graphic Edge as a full-time Pre-Press Technician from September 5, 2000 until March 1, 2005, when Peg Sanders, Human Resources Director, discharged her for

misconduct based on excessive absences. There was no other basis for the discharge. Ms. Custer's work hours were 7:00 a.m. to 4:00 p.m., with one hour for lunch.

The final absence that prompted the discharge occurred on February 28, 2005. On that date, Ms. Custer called in at 6:00 a.m. and left a message for her supervisor that she was ill and would be absent from work. Ms. Custer spoke with Marty Thieland, the floor supervisor for production. Ms. Custer's immediate supervisor, Jean Ahart, did not arrive until 7:00 a.m.

The employer has an attendance policy that is set forth in an employee handbook. Ms. Custer provided a signed acknowledgment of receipt of the handbook on January 17, 2003. Pursuant to the policy, Ms. Custer was to contact her supervisor no less than one-half hour prior to the scheduled start of her shift if she needed to be absent from work. Policy does not indicate what the employee is supposed to do if their supervisor is not on duty at the time the employee is supposed to call. The policy indicates that the employer considers chronic or habitual absenteeism a major offense, that will not be tolerated. The policy further states that each employee is expected to be present everyday, and that if an employee is absent more than one day in a row, he or she is expected to call in each day. The policy further states that the employer reserves the right to request and require a doctor's excuse for any absence. Since Ms. Custer's supervisor would not have arrived at the place of employment prior to 7:00 a.m. the scheduled start of Ms. Custer's shifts, the employer had the expected employees to initially notify another person at the place of employment and then follow up with a telephone call to their direct supervisor.

Ms. Custer's prior absences were as follows. On January 5-9, 2004, Ms. Custer was absent due to illness. Ms. Custer reported the absence to the employer, but not directly to her supervisor. On February 9-10, 2004, Ms. Custer was absent due to illness. Ms. Custer reported the absence to the employer, but not directly to her supervisor. On February 25-27, 2004, Ms. Custer was absent illness, and the employer did not document the means by which Ms. Custer notified the employer. On April 28-29, 2004, Ms. Custer was absent from work due to illness, and the employer did not document the means by which Ms. Custer notified the employer. On April 3, 2004, Ms. Custer report to work ill and left soon thereafter. On May 14, 2004, Ms. Custer left work one hour early, and the employer did not document the reason for the early departure. On July 2, 2004, is Custer left work one hour early, and the employer did not document the reason for the early departure. On July 20, 2004, Ms. Custer left work at 9:20 a.m. due to illness. On July 21, 2004, Ms. Custer was absent due to illness, and the employer did not document the means by which Ms. Custer notified the employer. On August 17, 2004, Ms. Custer was absent at illness, and the employer did not document the means by which Ms. Custer notified the employer. On September 9, 2004, Ms. Custer left work early due to illness. On September 10, 2004, Ms. Custer was absent due to illness, and the employer did not document the means by which she notified the employer. On September 22-31, 2004, Ms. Custer was on an unpaid medical leave of absence. On October 4, 2004, Ms. Custer was absent due to illness, and the employer did not document the means by which she notified the employer. On October 11, 2004, Ms. Custer arrived at work three hours late, following a doctor appointment, and had not notified the employer that she would be absent. On November 10, 2004, Ms. Custer left work at 9:00 a.m. for a doctor's appointment. On December 8-10, 2004, Ms. Custer was absent due to illness, and the employer did not document the means by which she notified the employer. On December 27-29, 2004, Ms. Custer was absent due to illness, and the employer did not document means by which she notified the employer. On February 10, 2005, Ms. Custer left work early for a doctor's appointment. On February 17-18, 2005, Ms. Custer was absent due to illness. Ms. Custer notified the employer, but did not speak directly to her supervisor. On

February 23, 2005, Ms. Custer was absent due to illness. Ms. Custer notified the employer, but did not speak directly to her supervisor.

On December 30, 2004, Ms. Sanders and supervisor Steve Anderson met with Ms. Custer and issued a "final" written warning regarding Ms. Custer's excessive "unscheduled" absences. The warning directed Ms. Custer subsequently report the absences directly to "the acting supervisor." On March 3, 2004, Ms. Custer had received another written warning regarding excessive absenteeism. The employer was aware of it Ms. Custer had ongoing health issues.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Custer was discharged for misconduct in connection with her employment based on excessive unexcused absences.

Iowa Code section 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.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Ms. Custer's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the employer must show that the unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record indicates that Ms. Custer properly notified the employer of her need to be absent due to illness on February 28, 2005. The "final" warning issued to Ms. Custer on December 30, 2004, instructed her to speak directly with "the acting supervisor." The evidence in the record indicates that Ms. Custer did just that. The administrative law judge concludes that it was unreasonable for the employer to expect Ms. Custer, at a time when she was ill, to thereafter make a second telephone call to the employer and speak directly to her supervisor.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Custer's final absence on February 28, 2005, was an excused absence. Accordingly, the evidence in the record fails to provide a "current act" of misconduct on the part of Ms. Custer that could serve as a basis for disqualifying her for benefits. See 871 IAC 24.32(8). Ms. Custer was discharged for no disqualifying reason. Accordingly, benefits are allowed, provided Ms. Custer is otherwise eligible.

As the final absence was an excused absence, administrative law judge may not consider the prior absences. See 871 IAC 24.32(8).

DECISION:

The Agency representative's decision dated March 25, 2005, reference 01, is reversed. The claimant was discharged from her employment for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

jt/sc