

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JODEE J CROWDES
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL 14A-UI-10516-LT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/14/14
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 September 30, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 28, 2014. Claimant participated. Employer participated through human resources business partner Marianne Hellums.

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: Claimant was employed full time as a patient service representative and was separated from employment on September 8, 2014. She was last tardy on that date. She was to begin work at 8 a.m. She reported at 8:15 a.m. The clock in time is rounded either up or down. The earliest report time would have been 8:12 a.m. There is a three-minute grace period until 8:03 a.m. The last tardiness and most of the earlier tardiness was related to traffic being “bogged down” between her residence in Des Moines and the workplace in Ankeny. On one occasion in late August 2014, she fell and called to ask for PTO. That absence was counted against her. The employer has a no-fault attendance policy that treats all absences the same, regardless of reason. Claimant had been warned in writing on September 3, 2014, about tardiness on July 17, 21, 29, 31, August 18, 21, 28, 29, and September 2, and 3, 2014. Other warnings were related to properly reported illness. Her evaluations on November 15, 2012, and November 22, 2013, mentioned problems with attendance issues but there was no detail about the reason for the absences. No Family and Medical Leave Act (FMLA) leave was considered in making the decision to discharge.

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(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 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). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for 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 September 30, 2014, (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css