

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARRY S WILLIS
Claimant

APPEAL NO. 13A-UI-10885-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/11/13
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 17, 2013, (reference 03) 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 21, 2013. Claimant participated. Employer participated through human resources clerk Kristi Fox. Claimant's Exhibit A (2 pages) was received.

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 production worker and was separated from employment on August 13, 2013. Her last day of work was August 7, 2013. General supervisor Jeff Buss had her leave work early to go to a doctor. She saw Steven Tarr, M.D. the same day and obtained an excuse but did not send, take or have the doctor's office fax it to the employer. (Claimant's Exhibit A, p. 1) She did not call the employer to report her absences on August 8, 9, and 12, 2013. She was aware of the employer's policy that required her to call or leave a message at the phone number on the back of her id card to report absences. She did not call because she did not have a phone and did not borrow one. Her supervisor, in the presence of a union representative, gave her letters explaining her attendance points on June 24 (refused to sign), May 10, February 20, January 15, 2013, and December 21, 2012. She was also absent on June 18, tardy excused; June 13, tardy; May 9 and 10 sick; April 1, sick; February 20, sick; January 11, 2013, sick; and December 6, 2012, tardy. Other absences are listed at page 2 of Claimant's Exhibit A.

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 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.

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 because it was not properly reported. The final absence, in combination with claimant's history of unexcused absenteeism (tardiness), is considered excessive. Benefits are withheld.

DECISION:

The September 17, 2013, (reference 03) 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/pjs