

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA PEREZ

Claimant

ROCK-TENN CONVERTING COMPANY

Employer

APPEAL NO. 14A-UI-01406-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated January 30, 2014, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on January 8, 2014 and benefits are allowed. A hearing was held on February 27, 2014. The claimant participated. Kelly Shader, HR, participated for the employer. Employer Exhibits 1, 2 and 3 were received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on January 26, 2010 and last worked as a full-time assemble line leader on January 8, 2014. The claimant received the employer attendance policy that provides for discipline. The employer does consider the reason for an attendance issue as to whether it is excused or unexcused.

The employer issued claimant a final suspension warning on July 26, 2013 that she received. The warning states claimant has acquired excessive excused absences for June 5, 2013, July 2, July 10 and July 24. Claimant served the three-day suspension and returned to work.

Claimant incurred five excused absences for October 8, October 18, December 7, January 3 and 7. Claimant's absences from October 8 – January 3 were due to her pre-school son's illness, not allowed to go for that reason and staying home with no other child care alternative. Claimant called her supervisor on January 7 reporting an absence due to her car not starting due to cold weather. The employer considered the absence excused but avoidable.

The employer discharged claimant for excessive absenteeism on January 8, 2014.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on January 8, 2014, for excessive "unexcused" absenteeism.

The employer policy allows for an absence to be excused or unexcused. It discharged claimant for absences it determined as excused. After the final warning, claimant incurred four employer determined excused absences and took no disciplinary action. There is nothing different about the final four excused absences from the final one.

DECISION:

The decision of the representative dated January 30, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on January 8, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs