

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER A ALLISON
Claimant

APPEAL NO. 11A-UI-14665-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10-16-11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 7, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 6, 2011. The claimant did participate. The employer did participate through Mary Eggenburg, Benefits Specialist and Molly Jamieson, Assistant Nurse Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a staff nurse full time beginning February 7, 2011 through October 18, 2011 when she was discharged. The claimant called in and took off work on October 4 a day she was regularly scheduled to work. She agreed with her nurse manager, Kelly, that she would pick up a shift sometime in the next six weeks. The claimant did not specifically agree that she would work on October 20. The claimant received her final warning on August 26 that put her on notice that one more instance of unexcused absenteeism would lead to her discharge. The employer did not establish that the claimant was ever told she was to work on October 20. Kelly did not testify and Employer's Exhibit One, was not signed by the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The employer's evidence does not establish that the claimant ever agreed to work on October 20. She had not signed off on the attendance sheet, nor was there any trade card. The employer's witness who spoke to the claimant about the trade did not testify. Under such circumstances the Administrative Law Judge cannot conclude that the employer has met their burden of proving misconduct by a preponderance of the evidence. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 7, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs