

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA RUSH

Claimant

APPEAL NO: 12A-UI-08619-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP

Employer

OC: 06-17-12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 9, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 13, 2012. The claimant participated in the hearing. Milt Rhiner, Manager at Lutheran Hospital and Methodist West, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time lab support technician for Central Iowa Hospital Corporation from October 14, 2009 to June 13, 2012. She was discharged for excessive tardiness. The claimant was 40 minutes tardy October 25, 2011; she was 52 minutes tardy December 4, 2011; she was 60 minutes tardy January 10, 2012; she was 10 minutes tardy January 19, 2012; she was 27 minutes tardy January 20, 2012; she was 20 minutes tardy January 26, 2012; she was 9 minutes tardy February 14, 2012; she was 22 minutes tardy March 12, 2012; she was 34 minutes tardy March 13, 2012; she was 30 minutes tardy March 26, 2012; she was 28 minutes tardy March 27, 2012; she was 11 minutes tardy April 4, 2012; she was 29 minutes tardy April 12, 2012; she was 20 minutes tardy April 13, 2012; she was 9 minutes tardy May 2, 2012; and she was 30 minutes tardy June 9, 2012. The claimant received a verbal warning in writing February 22, 2012; a written warning March 26, 2012; and a third level written warning April 23, 2012. Her incidents of tardiness October 25 and December 4, 2011, dropped off and after she was late May 2 and June 9, 2012, she received another third level written warning June 13, 2012. If an employee receives two third level written warnings within two years it can result in termination. The employer consequently terminated the claimant's employment June 13, 2012. The claimant suffers from "primary insomnia and attention deficit/hyperactivity disorder, inattentive type. Due to the symptoms of her illness it is very difficult for her to fall asleep and wake in the morning" (Claimant's Exhibit A).

The claimant was embarrassed to tell her supervisor or human resources she has ADHD and did not realize she would likely qualify for Family and Medical Leave (FML).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 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). While the claimant had a good cause medical reason for her 16 incidents of tardiness between October 25, 2011 and June 9, 2012, she never shared her medical condition with the employer to explain her tardiness despite having opportunities do so each time she received a warning regarding her attendance. Had she done so, she would likely have qualified for FML. As it stood, however, the employer had no knowledge the claimant had a medical condition that affected her ability to be on time for work. The employer has established that the 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 the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The July 9, 2012, reference 01, decision is affirmed. The 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css