

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LAURA E REDEPENNING**  
Claimant

**BEATON INC**  
Employer

**APPEAL 15A-UI-11047-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/15**  
**Claimant: Appellant (1)**

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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 29, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2015. The claimant participated personally. The claimant also presented witnesses Carla Escobar, her landlord, and Robert Redepenning, husband of the claimant. The employer participated through Kathy Frerichs, controller. Employer Exhibits One through Four were admitted into evidence.

**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: The claimant was employed part-time as a crew member and was separated from employment on September 4, 2015, when she was discharged.

The claimant testified during her employment that she had eight disciplinary actions total, including three for no-call/no-shows that were issued on November 23, 2014 (Employer Exhibit Four), December 31, 2014 (Employer Exhibit Three), and July 4, 2015 (Employer Exhibit Two). The July 4, 2015 warning, which was presented and signed by the claimant, states, "Any further violations of Beaton Inc. policies will result in termination."

The claimant last performed work on September 3, 2015, and was aware of her shift on September 4, 2015, from 7:00 a.m. until 3:00 p.m. The employer discourages employees from text messaging, and requires an employee to call the store manager two hours prior to a shift or find a replacement for their shift for unplanned absences. On September 4, 2015, the claimant woke up with a headache and determined she could not work. She did not call the store

because she was not thinking about it, and her phone did not have minutes available. She texted her manager, Theresa Klauda, after the shift acknowledging she had missed her shift. Ms. Klauda responded via text message, "you should have called." The claimant was discharged the following day by Ms. Klauda when she tried to clock in.

### **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 attendance policy is not dispositive of the issue of qualification for unemployment insurance 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 claimant was not incapacitated or physically unable to notify the employer of her absence in a timely fashion, or even text message (although discouraged) the employer so they could make other arrangements for staffing. The employer has credibly established that claimant was warned that further no-call/no-shows could result in termination of employment and the final no-call/no-show was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The September 29, 2015, (reference 01) unemployment insurance 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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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