

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEIDE L BLATCHFORD
Claimant

APPEAL NO. 10A-UI-14170-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 09-12-10
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 October 7, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 2, 2010. The claimant did participate. The employer did participate through Tanya Michael, Telesales Manager, and Ramona Mitchell, Account Coordinator, and was represented by John O’Fallon of Barnett Associates.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a customer sales and service associate, full-time, beginning February 23, 2009, through September 14, 2010, when she was discharged. The claimant was late to work on September 14, 2010. She had taken a sleeping pill the night before and did not wake up until 11:00 a.m. She was to be to work at 8:00 a.m. When she reported to the employer that she had overslept due to medication she had taken, she was discharged for excessive absences. The claimant was last warned about her attendance on May 4, 2010. The claimant was absent due to illness on September 2, 7, and 14; August 3, 4, 9, 12, 13, 18, 19, and 23; July 28 and 30, and April 29. All of her prior absences were due to illness. The claimant applied for leave pursuant to FMLA, but her doctor failed to fill out his portion of the paperwork and return it to the employer. The claimant had no way to force her physician to timely fill out the FMLA paper work.

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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying, since it does not meet the excessiveness standard. Given that all of the claimant's prior absences were due to properly reported illness, the administrative law judge cannot find that the claimant had excessive unexcused absenteeism. Benefits are allowed.

DECISION:

The October 7, 2010 (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/kjw