

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA HANDT-MORAN
Claimant

APPEAL NO: 11A-UI-12500-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES
Employer

OC: 08-21-11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 12, 2011, 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 October 17, 2011. The claimant participated in the hearing. Natasha Oelkers, Store Manager and Lori Heger, Director of Human Resources, participated in the hearing on behalf of the employer.

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 general retail worker for Goodwill Industries from February 7, 2011 to August 12, 2011. She was discharged from employment due to a final incident of absenteeism that occurred August 11, 2011. On May 17, 2011, the claimant had her 90-day review. Employees are allowed three absences during their first 90 days and the claimant had exceeded that amount at the time of her 90-day review and was issued a written warning stating she could not have any further absences in the next six months. The employer requires all employees to provide a doctor's excuse for every absence due to illness. The claimant was a no-call/no-show July 17 and 18, 2011. Store Manager Natasha Oelkers called the claimant July 17, 2011, and the claimant stated she had a migraine and had a doctor's appointment scheduled July 18, 2011. The claimant was scheduled at 11:00 a.m. July 18, 2011, but again did not call the employer to state she would not be in that day. Ms. Oelkers called her again and the claimant stated she was waiting to hear from her physician and would call later that day. Ms. Oelkers told her she had two no-call/no-shows and must call the employer at least one hour before the start of her shift. On July 19, 2011, the claimant called the employer one hour before the start of her shift and said she was going to the doctor and would call the employer after her appointment. On July 20, 2011, the employer sent the claimant home for a decision day because of her violation of the no-call/no-show policy. On July 21, 2011, the claimant returned to work with a decision/making day letter saying she would

call at least one hour before the start of her shift. On August 11, 2011, the claimant was a no-call/no-show. The employer tried to contact her but could not reach her. The claimant had traded shifts with another employee August 12, 2011, and was therefore scheduled to work August 13, 2011, instead but showed up August 12, 2011. The employer notified her that her employment was terminated for accumulating three no-call/no-shows in violation of the employer's policy. The claimant testified that she suffers from migraines, various mental illnesses and dyslexia and the employer was aware of her problems at the time of hire. She attributes her no-call/no-shows to those conditions.

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). The claimant was a no-call no-show July 17, 18 and August 11, 2011. She received a written warning about her attendance at her 90 day review May 17, 2011, and was aware she was required to call the employer at least one hour prior to the start of her shift if she was going to be absent. The employer printed a copy of the claimant's schedule for her every week and called her July 17 and 18, 2011, when she did not call or show up for work. It attempted to call her August 11, 2011, when she failed to call or show up for work but was unable to reach her. While the administrative law judge is not unsympathetic to the claimant's migraine, mental health and dyslexia issues, the employer cannot be expected to make continuous and repeated accommodations for no-call/no-show absences as that leaves the employer short staffed. Consequently, 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 September 12, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism with three no-call/no-shows ending her employment. 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