

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**FANTASHA LOMAX**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL NO. 14A-UI-04248-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/13**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Fantasha Lomax (claimant) appealed an unemployment insurance decision dated April 21, 2014, (reference 03), which held that she was not eligible for unemployment insurance benefits because she was discharged from West Liberty Foods, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2014. The claimant participated in the hearing. The employer participated through David Rodriguez, Human Resources Specialist.

**ISSUE:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time molder from August 19, 2013, through April 1, 2014, when she was discharged due to violation of the employer's attendance policy. Employees are discharged once they incur eight attendance points. The claimant received written warnings for attendance on October 23, 2013, and on November 27, 2013. A final warning was issued on March 19, 2014, when she had seven attendance points. The claimant left early on March 31, 2014, and called in a personal absence on April 1, 2014. She was discharged with nine attendance points.

The claimant had nine absences and two of those absences were due to illness. The last two absences were due to the fact that the claimant went to Chicago since her father was in the hospital. She testified he had been shot and his girlfriend was threatening to "pull the plug." The claimant said her father passed away on April 15, 2014. The employer sent in potential exhibits for the hearing and the exhibits were mailed to the claimant but she did not receive them since she was in Chicago at the time of the hearing.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 1, 2014, for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

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 absences, in combination with the claimant's history of absenteeism, are considered excessive. Benefits are denied.

## DECISION:

The unemployment insurance decision dated April 21, 2014, (reference 03), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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