

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENDRA W TROMP
Claimant

BEASTON CAMP KENNELS
Employer

APPEAL 15A-UI-00063-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/16/14
Claimant: Appellant (1)

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 December 22, 2014 (reference 01) unemployment insurance decision that denied benefits based upon her separation. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2015. The claimant participated. The employer participated through Kelly Beaston.

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 full time as a kennel worker and was separated from employment on November 18, 2014 when she was discharged.

The employer discharged the claimant for two reasons; for repeated tardiness and for misuse of the company credit card. The claimant had a previous incident involving use of the company credit card for personal use when she purchased toys for her child at Toys R Us. The claimant paid the employer back. The claimant was placed on a 60-day probation on October 17, 2014 for repeated tardiness and made aware her job was in jeopardy.

On November 17, 2014 the employer opened its credit card statement from the prior month and it revealed that the claimant had made a purchase of \$137.58 at Kohl's. The employer operates a business for animal care and, therefore, knew the claimant's purchase was personal and not job related. The claimant then returned the purchase on October 22, 2014. In light of prior incidents, the employer was upset that the claimant had not been forthcoming about the incident.

On the same day, the employer pulled the claimant's time card for the prior month and it revealed the claimant had been tardy on four occasions since her warning: October 20, November 10, November 16, and November 17, 2014. The claimant offered several explanations including that she had been given permission to be late to a shift to pick up dog food, was on the phone with the employer during one of the tardies, and the others must have been due to customers being at the desk and her not wanting to interrupt service by clocking in. However, the employer testified that one of the two shifts the claimant referred to was at 6:00 a.m. and there would be no customers present to delay her clock in time. The claimant was late at least one, if not four times, after her warning on October 17, 2014 and subsequently discharged.

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(1)a, (7) provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(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. In this case, the employer testified that regardless of the claimant's credit card purchase and return, she would have been fired for her tardies. 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).

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 employer has credibly established that claimant was warned that further unexcused tardies could result in termination of employment and the final absence was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 22, 2014 (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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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