

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALANA WARSON
Claimant

APPEAL NO: 16A-UI-10677-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 08/28/16
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 20, 2016, 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 14, 2016. The claimant participated in the hearing with her witness/step-father Gary Beckman. Sheri Miksch, Executive Team Leader for 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 part-time soft lines team member for Target from October 18, 2015 to August 31, 2016. She was discharged from employment due to a final incident of absenteeism that occurred on August 31, 2016, when the claimant was tardy.

The claimant called in and reported her daughter was ill and she would not be at work June 4, 2016; she called and stated she would not be in June 14, 2016, because she was taking her daughter to a medical appointment; and she became dizzy at work, could not perform the essential functions of her job, and was sent home June 25, July 5 and July 14, 2016. On July 15, 2016, the employer asked the claimant if she wanted to take time off, shorten her shifts, consult the employee assistance program or post her shifts so she could have additional time off. The claimant's supervisor also talked to her about how her absences affected the team and the claimant stated she understood and indicated there was no reason she could not improve.

On July 23, 2016, the claimant was 2.77 hours late because she did not read the schedule correctly. The employer issued the claimant a written warning for attendance August 5, 2016, and suggested the claimant take a picture of her schedule so she would not be confused about when she worked.

On August 20, 2016, the claimant was scheduled at 11:30 a.m. but did not report to work until noon. The claimant stated she must have written her schedule down incorrectly. On August 20, 2016, the employer issued the claimant a final written warning for attendance. The claimant said she understood the consequences of her tardiness and the need to be at work on time.

On August 31, 2016, the claimant was scheduled to work at 6:00 a.m. but did not arrive until 8:18 a.m. The claimant acknowledged she knew she was supposed to be at work at 6:00 a.m. and she had no excuse for being late beside the fact she overslept. She stated she wrote her schedule down and human resources confirmed she wrote it down. She also agreed the employer previously recommended she take pictures of her schedule. The employer notified the claimant her employment was terminated.

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 § 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 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 warned about her tardiness August 5 and August 25, 2016. Despite those warnings in close proximity, she was two hours and 18 minutes tardy August 31, 2016, and the employer terminated her employment. The three incidents of tardiness were the cause of the termination. The claimant's absences due to illness were not considered in the employer's decision to discharge the claimant or in the decision denying her benefits.

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 20, 2016, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs