

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHIVETTE M REDD**  
Claimant

**APPEAL NO. 09A-UI-15766-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**  
Employer

**Original Claim: 09/13/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 14, 2009, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 23, 2009. The claimant participated. The employer participated by June Watkins, human resources director; and Michelle Pendleton, program manager. The record consists of the testimony of June Watkins, the testimony of Michelle Pendleton, the testimony of Shivette Redd, the testimony of Tasha Pates, and Employer's Exhibits 1 through 19.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case, Blackhawk County, operates two facilities that provide care for individuals. The claimant worked as a part-time developmental aide at County View, which serves the needs of persons with mental disabilities. The claimant's last day of work was September 14, 2009. She was terminated on September 24, 2009, for excessive absenteeism.

The incident that immediately preceded the claimant's termination occurred on September 6, 2009, when she was late for work. The reason she was late for work was that she had been arrested for driving without a license and had to wait to be released from jail. This incident was preceded by a three-day suspension on August 18, 2009; August 19, 2009; and August 20, 2009, for chronic absenteeism. The claimant had been absent from July 14, 2009, to July 31, 2009. On July 11, 2009, the claimant was given a performance improvement plan designed to address her chronic absenteeism. The goal was zero attendance issues. After that performance improvement plan was agreed to, the claimant missed work from July 14, 2009 to July 31, 2009. The claimant was also given a notice of disciplinary action on June 8, 2009, for chronic absenteeism.

Except for the tardiness on September 6, 2009, the claimant's absences were due to her child. He had had multiple health problems since birth and was two years old at the time of the claimant's termination. Before the disciplinary notices were given to the claimant, she had exhausted all of her available benefits under the Family Medical Leave Act (FMLA) and had had other leaves of absence as well.

### **REASONING AND CONCLUSIONS OF LAW:**

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(1)a 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer or in repeated acts of carelessness or negligence. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matter of "personal responsibility" is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The employer has the burden of proof to show misconduct.

The record in this case established that the claimant had excessive absences from work. Her final instance of tardiness is clearly unexcused. The difficult issue is how to categorize the remainder of her absences. The claimant testified that the reason she was absent so frequently from work was that she needed to take care of her son. He had had multiple health problems since the time of his birth and was two years old at the time of her termination. The employer

had previously provided the claimant with FMLA leave and the claimant had exhausted all of her rights under FMLA. Other leaves of absence had also been given to the claimant. Only after FMLA leave had been exhausted did the employer attempt to address the chronic absenteeism. The claimant was given multiple warnings for attendance violations and instituted a performance improvement plan that had a goal of no attendance issues. Only three days after that plan was agreed to, the claimant had another lengthy absence because her son was in the hospital. She was given a three-day suspension. The claimant was then terminated after being late following an arrest for driving without a license.

Absences for a worker's own illness are considered excused and there are circumstances, such as the sudden illness of a family member, especially a small child, which may also be excused. In this case, however, the claimant had the tremendous responsibility for caring for a child that was chronically ill. This was the claimant's personal responsibility, much like the need to provide child care while a parent is at work, or care for an elderly parent. The inability to obtain child care, except in emergency situations, is not an excused absence. The administrative law judge has great sympathy for the claimant, but her chronic absenteeism to care for her child does not constitute excused absences. The claimant knew that her job was in jeopardy and yet she did not take any steps to provide for alternate care for her child or to work out arrangements that might have enabled her to satisfy her employer's need for a dependable worker and attend to her child's needs. Benefits are denied.

**DECISION:**

The representative's decision dated October 14, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw