

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BROOKE A DRULINER**  
Claimant

**APPEAL NO: 14A-UI-10038-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORMEL FOODS CORPORATION**  
Employer

**OC: 08/31/14  
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 22, 2014, 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 15, 2014. The claimant participated in the hearing. Erin Montgomery, Plant Controller, 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 cryovac rotation nights/general worker for Hormel Foods Corporation from January 10, 2013 to September 3, 2014. She was discharged from employment due to a final incident of absenteeism that occurred July 22 through August 27, 2014.

The employer's attendance policy is a no-fault policy. If an employee accumulates three absences within a five-month period the employer's progressive disciplinary policy goes into effect. Three absences within five months results in a written warning which remains in effect for six months. If the employee subsequently has further absences during the six months following the written warning a disciplinary strike will be issued. Strikes remain in effect for one year. The employee accumulates strikes for each absence that occurs within six months of the previous warning or strike. Three strikes results in termination. If the employee provides a doctor's note or is on Family and Medical Leave (FML), consecutive day absences count as one absence.

On June 26, 2013 the claimant received a written warning for absences April 8, 2013, May 9, 2013 and June 24 through June 26, 2013. The June 2013 absence was accompanied by a doctor's excuse and resulted in one occurrence.

On November 14, 2013 the claimant received her first strike for the June 24 through June 26, 2013 absence and June 28 and November 14, 2013 absences because she accumulated three absences within six months following her written warning of June 26, 2013.

The claimant left work July 22, 2014 and went to the emergency room due to an ovarian cyst. A doctor's note excused her from work July 23, 2014 and restricted her to lifting 15 pounds. The claimant notified the employer she would be making an appointment with her primary care physician and would provide documentation for FML or short-term disability. On July 28, 2014 she received her second strike for absences that occurred July 24, 25 and 28, 2014.

The claimant was absent July 22 through August 27, 2014 without providing medical documentation to the employer excusing her from work. On August 20, 2014 the employer sent the claimant a letter because it could not reach her by phone or through her emergency contact number. Around August 22, 2014 the claimant responded to the employer's letter. The employer told the claimant it was her responsibility to keep the employer informed with updates on her condition and the needed time off and to provide medical certification for her absences. The employer gave the claimant new copies of the FML and short-term disability paperwork and instructed her it must be returned by her doctor's office within 15 calendar days, which was September 6, 2014.

The employer met with the claimant August 28, 2014 and extended her paperwork deadline to September 12, 2014. On September 2, 2014 the claimant approached her supervisor and said the employer should "go ahead and fire" her because she was not able to get the required paperwork. The plant superintendent then met with the claimant and instructed her to return the paperwork by September 12, 2014 to preserve her employment. The claimant was excused from working the remainder of her shift September 2, 2014 and was told to return September 3, 2014 for a meeting. On September 3, 2014 the claimant met with Erin Montgomery, Plant Controller, the plant superintendent, the claimant's supervisor, and the claimant's union steward. The claimant stated she was unable to provide the paperwork. The employer asked her why and she stated she contacted her doctor and was put on hold for 25 minutes and then told her doctor was on vacation for one and one-half weeks. The claimant's union steward asked if the claimant could have another extension of time to provide the paperwork. Ms. Montgomery thought it was odd that the doctor's office had not completed the paperwork because even if the doctor was on vacation she knew nurses' were able to fill out the paperwork. She asked the claimant if she could have permission to contact her doctor's office and the claimant said yes. Ms. Montgomery secured the doctor's office phone number and called the doctor's office with all the parties to the meeting present. She put the nurse on speakerphone and the nurse indicated the doctor was in the office and had not been on vacation. She stated the doctor did not authorize any time off from work due to her ovarian cyst and had not imposed any work restrictions or time off work. At that point the employer believed the claimant had not been honest and asked her if she intended to get the medical certification from a different doctor and the claimant said she did not. The employer asked the claimant if she understood that without medical documentation her absences would count against her and the claimant stated she understood. The employer asked the claimant if she was aware she had one active attendance strike against her and with the addition of these absences it would lead to termination and the claimant indicated she understood. The employer asked the claimant if she would like to forfeit her right to the 15 days to provide the medical documentation and the claimant said yes. Ms. Montgomery then issued the claimant's second and third strikes and terminated her employment. August 28, 2014 was the first day the employer could issue the claimant disciplinary action regarding her attendance but instead it granted her an additional 15 days to submit the required medical documentation. The claimant received a full release to return to work September 2, 2014.

## 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).

While the claimant had a note excusing her from work and imposing a lifting restriction for July 23, 2014 she did not have any medical documentation covering her absences from July 24 through August 27, 2014. The employer provided her with the required FML and short term disability paperwork around July 22, 2014 and informed her she had 15 days to return the paperwork. When the claimant returned to work August 28, 2014 without the paperwork, the employer provided it to her again and extended the deadline to September 12, 2014. She then notified the employer she would not be able to comply by supplying the necessary paperwork completed by her physician and that her physician would not excuse her absence or complete the FML paperwork.

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 22, 2014, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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