

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMELA BRUCE
Claimant

APPEAL NO: 17A-UI-07557-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAUTAUQUA GUEST HOME
Employer

OC: 07/09/17
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 July 24, 2017, 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 August 11, 2017. The claimant participated in the hearing. Sue Ayers, Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

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 CNA for Chautauqua Guest Home from October 26, 2016 to July 8, 2017. She was discharged from employment due to a final incident of absenteeism that occurred on July 7, 2017.

On May 15, 2017, the claimant received a written warning because she had missed 18 days (Employer's Exhibit Two). The warning stated "further concerns could result in termination of employment" (Employer's Exhibit Two).

The claimant's attendance initially improved but she was absent without a doctor's note February 19, 2017, after she said she was at the hospital with her daughter and she was absent due to childcare issues March 4, 2017.

The claimant usually worked from 5:00 p.m. or 6:00 p.m. until 10:00 p.m. On June 27, 2017, she was scheduled to work at 6:00 p.m. but she called and stated she had a dental appointment at 5:00 p.m. and did not know how long it would last. She asked if she could come in after her appointment and the employer strongly urged her to do so but the claimant did not come in or call the employer. On July 1, 2017, the claimant agreed to pick up a 6:00 p.m. to 9:00 p.m. shift but then refused to report for work. On July 3, 2017, the claimant was scheduled to work 6:00 p.m. to 9:00 p.m. but stated she was going to be out of town. She said she would try to

find a replacement but she would not be at work that day. On July 4, 2017, the claimant was scheduled from 2:00 p.m. to 10:00 p.m. She asked if she could leave at 9:45 p.m. and was told to ask the nurse but the claimant left without speaking to a nurse. On July 7, 2017, the claimant was scheduled to work from 6:00 p.m. to 10:00 p.m. She called the employer and stated the brakes on her daughter's car went out and she would not be at work. The employer terminated the claimant's employment for excessive, unexcused absenteeism July 8, 2017 (Employer's Exhibit Three).

The claimant testified she was assigned to work at the employer's other facility but called in because she could not work at that facility as she had not been trained and believed that was a violation of state law.

There is no evidence that these absences were related to illness.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 stated she had a dental appointment at 5:00 p.m. June 27, 2017, she did not work until 6:00 p.m. and could have easily scheduled the appointment during the day when she was not expected to work.

The claimant testified she was absent because she was scheduled to work in the employer's other facility and had not been trained. She asserts that is a violation of state law on the part of the employer. The claimant's testimony was not as persuasive as that of the employer's facility

administrator/witness who stated it is not required to train employees before assigning them to work in a separate facility. The employer uses a staffing agency on a regular basis and there is no rule or law that requires a training period. The residents have care plans for employees to read at the beginning of their shifts and the care they provide is consistent and similar between facilities.

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 are denied.

DECISION:

The July 24, 2017, 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/scn