

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALLISON R BRUNO
Claimant

NORDSTROM INC
Employer

APPEAL 15A-UI-02041-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/04/15
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 February 4, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2015. The claimant participated. The employer was represented by Thomas Kuiper. The employer participated through witnesses Jill McDowell, human resources assistant, and Justin Bird, assistant manager. Exhibits 1-2 were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying, work-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 packing processor. She began her employment on October 19, 2009, she last worked on November 21, 2014, and was separated from employment on January 13, 2015.

The claimant sustained a work-related injury in December 2013. Her worker's compensation claim was denied. The parties did not provide specific information about the duration and specific terms of the claimant's medical leave.

During the relevant period, the claimant was released to work with certain restrictions which placed her in a light duty status. She was advised to report her attendance to Stacey Hoffman, Human Resources Lead. The employer's policy requires that employees communicate with their supervisory and/or human resources staff regarding their absences. The claimant last called in to report that she would not be working on Friday, January 2, 2015. Generally, the claimant was scheduled to work Monday through Friday. The claimant did not call or report to work for the period of January 3 through January 7, 2015. She did not call human resources or leave and benefit personnel to report her absence from work.

On January 6, 2015, Hoffman sent the claimant an e-mail regarding her absences. On January 7, 2015, Hoffman sent a certified letter to the claimant at the sole mailing address she provided to the employer. The letter stated that the claimant was on unapproved leave, she had not called in or worked recently, and she needed to respond by January 13, 2015 or the employer would assume she had resigned. (Exhibit 1) The claimant did not respond to the e-mail or letter.

Hoffman sent a second letter dated January 15, 2015, which indicated that because the claimant had not contacted the Human Resources Department or the Nordstrom Leave Unit, as required by company policy, her employment had ended on January 13, 2015. (Exhibit 2) The claimant did not collect her mail at her mother's house until after January 13, 2015. She had been living with friends and went to get her mail from her mother irregularly. The claimant did not provide the employer with an alternative address during the relevant period. The claimant did not present to work after she called in to say she would not work on January 2, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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(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 employer has the burden of proof in establishing disqualifying job misconduct. 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

The claimant's failure to timely report her status to her employer over an extended period is not excused by her receipt of FMLA benefits. On several, successive days in January 2015, the claimant did not communicate timely with her employer, by any of several means. The claimant

provided the employer with one mailing address and yet failed to check on her mail on a timely, consistent basis. She did not report her absences to the employer on a timely basis during a two-week period in January 2015. Her absences were not excused.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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 absences 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 February 4, 2015, (reference 02) 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs