

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA SMITH
Claimant

APPEAL NO: 15A-UI-06900-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGBEE WEST MAIN LP
Employer

OC: 05/10/15
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 June 8, 2015, 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 July 22, 2015. The claimant participated in the hearing. Stephanie Schellhase, Assistant Store Manager, 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 fragrance associate for Dillard's Department Store from July 16, 2013 to May 6, 2015. She was discharged from employment due to a final incident of absenteeism and an incident of insubordination that occurred on April 27, 2015.

In 2015, the claimant was tardy on 19 occasions. On February 13, 2015, the claimant was scheduled to work at 9:45 a.m. and arrived at 9:54 a.m.; on February 16, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:55 a.m.; on February 18, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:56 a.m.; on February 20, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:53 a.m.; on February 26, 2015, she was scheduled to work at 12:00 p.m. and arrived at 12:09 p.m.; on March 14, 2015, she was scheduled to work at 9:45 p.m. and arrived at 10:04 a.m.; on March 15, 2015, she was scheduled to work at 10:45 p.m. and arrived at 10:54 a.m.; on March 18, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:54 a.m.; on March 19, 2015, she was scheduled to work at 11:00 a.m. and arrived at 11:20 a.m.; on March 20, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:51 a.m.; on March 25, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:51 a.m.; on April 1, 2015, she was scheduled to work at 9:45 a.m. and arrived at 10:23 p.m.; on April 2, 2015, she was scheduled to work at 12:00 p.m. and arrived at 12:25 p.m.; on April 4, 2015, she was scheduled to work at 9:45 a.m. and arrived at

9:51 p.m.; on April 13, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:52 p.m.; on April 16, 2015, she was scheduled to work at 12:00 p.m. and arrived at 12:17 p.m.; on April 17, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:51 a.m.; and on April 18, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:57 a.m.

The claimant was absent due to properly reported illness March 26, April 20 and April 23 through April 25, May 1 and May 4, 2015.

On April 1, 2015, the claimant was scheduled to work until 6:00 p.m. but left at 3:44 p.m. She told her manager she had to leave but her early departure was not approved.

On April 27, 2015, she was scheduled to work at 9:45 a.m. and arrived at 9:51 a.m. She was scheduled to work until 6:00 p.m. The employer spoke to the claimant about her performance and moving her to another area of the store. The claimant was upset by the conversation and left, walking through the store, and was heard by her manager and another associate to say, "I hate this fucking place." The claimant then left at 4:10 p.m.

The claimant was moving and was off work May 2, 2015, as a result. She asked for either April 29 or May 1, 2015, off to prepare for her move but her request was denied so she called in sick May 1 and May 4, 2015. The claimant stated she was also ill during that time.

After considering the claimant's excessive tardiness and the fact she received written notices for improvement with regard to her tardiness February 16, 18, 23, 29 and April 12, 2015, and a written warning April 2, 2015, stating she could not be tardy or absent in the next 30 days, the employer terminated the claimant's employment May 6, 2015.

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 accumulated 19 incidents of tardiness between February 13 and April 27, 2015, the only year for which the employer has her attendance records. Despite receiving five attendance notifications and a written warning, the claimant's attendance did not improve. Finally, on the last day, she was tardy and left one hour and 50 minutes early and was insubordinate in stating, "I hate this fucking place" loudly enough that her supervisor and another associate heard her. 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 June 8, 2015, 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/pjs