

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JACLYN B BULLOCK
Claimant

APPEAL NO: 19A-UI-03389-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGBEE WEST MAIN LP
Employer

OC: 03/31/19
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96-3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 17, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 13, 2019. The claimant participated in the hearing. Bridget Miller, 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 Clinique Counter Manager for Higbee West Main (Dillard's) from October 3, 2014 to April 1, 2019. She was discharged from employment due to a final incident of absenteeism that occurred on March 13, 2019.

The employer allows nine incidents of tardiness and/or leaving early within a rolling six month period before termination occurs. The employer's fiscal year began February 3, 2019. The claimant was seven minutes tardy February 9, 2019; she was 12 minutes tardy February 10, 2019; she was six minutes tardy February 19, 2019, she left 39 minutes early February 23, 2019; she left four hours and 15 minutes early February 25, 2019; she left early two hours and 57 minutes March 4, 2019; she left two hours and 42 minutes early March 7, 2019; she was 49 minutes tardy March 12, 2019; and she left three hours and 45 minutes early March 13, 2019.

The employer issued the claimant a written warning March 2, 2019, after she accumulated five incidents of tardiness and/or leaving early and issued her another written warning March 15, 2019, after she accumulated seven incidents of tardiness and/or leaving early. The employer terminated the claimant's employment April 1, 2019. The reason for the delay between the

claimant's last incident of leaving early March 13, 2019, and her termination April 1, 2019, is the employer was on vacation for one week and then the claimant was on vacation for one week. The employer discharged the claimant when she returned from vacation April 1, 2019.

The claimant was going through a custody battle beginning in late December 2018 and had to attend court hearings and meetings with her attorney. She also had to pick up her children and could no longer count on her ex-husband or his family to help with that task and did not have any family of her own in the area.

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).

The claimant accumulated nine incidents of tardiness and/or leaving early between February 9 and March 13, 2019. While she had good personal reasons for leaving early, her absences were excessive and not excused under the employer's attendance policy. The claimant's personal circumstances were unfortunate. However, her tardiness and leaving early cannot be attributed to the employer.

The employer has established that the claimant was warned about her absenteeism 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 April 17, 2019, reference 01, decision is reversed. 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