

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFFORD V MADDOX
Claimant

APPEAL NO. 12A-UI-05454-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 04/15/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the May 4, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on June 1, 2012. Claimant participated. Employer participated through human resources business partner Jennifer Smith, operations director Andrea Bolte, RN team lead Marie Baker, and was represented by Tom Kuiper of Talx. Employer's Exhibit One was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cardiac monitor technician from November 2007 and was separated from employment on April 19, 2012. His last day of work was April 15. On April 5 he was a no call-no show because he was not aware he was working that night because of the Easter holiday schedule posted on February 6. He was warned in writing on April 4, 2012. He was also absent on March 31, 2011, April 30, May 2, 27, August 3, September 4, 10 and 11, October 9, 16, 30, November 27, December 22, 2011, January 22, 2012, February 24, March 18, 24 and 25, 2012. All were related to properly reported absences 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 no disqualifying reason.

Iowa Code section 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.

871 IAC 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. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer because of failure to read the schedule correctly is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because his other absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

DECISION:

The May 4, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs