IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIFFANY D ENFIELD
Claimant

CATHOLIC HEALTH INITIATIVES PHYSICIANS SERVICES
Employer

APPEAL NO. 17A-UI-06931-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/11/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Tiffany Enfield (claimant) appealed a representative's June 30, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Catholic Health Initiatives Physicians Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 26, 2017. The claimant participated personally. The employer was represented by Lesley Buhler, Hearings Representative, and participated by Jessica Elliott, Human Resources Business Partner; Shelly Marshall, Practice Manager; and Lindsey Troutner, Clinic Administrator. Exhibit D-1 was received into evidence. The Employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 27, 2013, as a full-time certified medical assistant two. She signed for receipt of the employer's handbook on June 24, 2016. The attendance policy indicates an employee may be terminated if she accumulates ten attendance points in a twelve month rolling period.

The employer discovered the claimant's supervisor was not enforcing the attendance policy with the claimant and decided to allow the claimant to start at the beginning of the disciplinary process, even though she had accumulated ten attendance points. The claimant accrued one-half point each when she was tardy on February 6, 7, 9, 10, 16, 20, 21, 22, March 1, 8, 14, 21, 3, 31, April 19, 20, 24, May 1, and 4, 2017. She was absent on May 10, 11, July 13, November 28, 2016, January 23, February 17, March 22, April 5, 6, 13, and 25, 2017.

On May 4, 2017, the employer issued the claimant a verbal warning for tardiness stating the claimant had accumulated eighteen attendance points in a rolling twelve month period. Also on May 4, 2017, the employer issued the claimant a verbal warning for missed time clock transactions. The employer notified the claimant in both warnings that further infractions could result in termination from employment.

On May 15, 2017, the employer issued the claimant a written warning for tardiness on May 9, 2017. As of May 9, 2017, the claimant had accumulated 18.5 attendance points. On May 15, 2017, the employer issued the claimant a second written warning for tardiness on May 12, 2017. As of May 12, 2017, the claimant had accumulated nineteen attendance points. The employer notified the claimant in both warnings that further infractions could result in termination from employment.

On June 7, 2017, the claimant signed for a letter from the employer notifying her that her hours were changing. This was the employer's effort to help the claimant be at work on time. The claimant was warned she could be terminated if she did not comply with the employer's expectations. On June 14, 2017, the claimant did not appear for work at 8:15 a.m. At 9:22 a.m. the claimant called the employer saying she overslept. The employer terminated the claimant for excessive absenteeism.

A disqualification decision was mailed to the claimant's last known address of record on June 30, 2017. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 10, 2017. The appeal was not filed until July 11, 2017, which is after the date noticed on the disqualification decision. When the claimant tried to file her appeal online before the due date, the department website gave a message saying it was having technical difficulties.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an

> appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the department's website was not available. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was discharged for misconduct. The administrative law judge concludes was

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 30, 2017, reference 01, decision is affirmed. The appeal in this case was timely. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in

and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs