

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATOYA T RUSSELL**  
Claimant

**APPEAL NO. 11A-UI-01220-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMBOLDT QUALITY SOUTH INC**  
Employer

**OC: 02/21/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Humboldt Quality South (employer) appealed a representative's January 26, 2011 decision (reference 03) that concluded LaToya Russell (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 3, 2011. The claimant participated personally. The employer participated by Shelley Davis, Administrative Assistant.

**ISSUE:**

The issue is 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 March 22, 2010, as a full-time licensed practical nurse. The claimant signed for receipt of the employer's handbook on March 22, 2010. The claimant's three month evaluation showed that she had perfect attendance. During her employment she was absent due to a medical issue and provided a doctor's excuse. On another occasion she traded shifts with a co-worker so that no absence would be recorded. This practice was allowed by the employer.

On December 17, 2010, the claimant was supposed to report to work at 10:30 p.m. The claimant and her former husband were involved in a domestic situation. Law enforcement and the Department of Human Services were called to the claimant's residence. After they left the former husband disconnected all land lines and took the claimant's cellular telephone. He would not let the claimant leave the residence in retaliation for reporting honestly to the authorities.

On December 18, 2010, the claimant was able to leave her residence and she immediately called the employer. The employer told the claimant that one failure to appear for work without notice was grounds for the claimant's separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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 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 in this case has not established that the claimant was warned that further unexcused absences could result in termination of employment. In this case the claimant was absent from work twice and one was for a medical issue with a doctor's excuse. In this case the final absence is excused because the claimant was held against her will. The claimant's two absences were not excessive. Benefits are allowed.

**DECISION:**

The representative's January 26, 2011 decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs