

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACY L MCINTYRE
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL 16A-UI-01566-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 28, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 29, 2016. Claimant participated. Employer participated through human resources business partner, Kendra Steuhm.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a patient access associate from August 20, 2008, and was separated from employment on January 5, 2016, when she was discharged.

The employer has an attendance policy which applies occurrence values to attendance infractions, including absences and tardies, regardless of reason for the infraction. Every time an employee misses less than half of their shift, it results in half of an occurrence. If an employee misses more than half of their shift, they receive a full occurrence. Occurrences are removed on a six month rolling period. Employees are warned as occurrences occur; upon a fourth occurrence it is verbal corrective action (first level), a fifth occurrence is corrective action level two, a sixth occurrence is a corrective action level three, and the seventh occurrence results in discharge. If an employee has four second level corrective actions or above in a twelve-month period, then the employee is discharged. This is a written policy. Claimant was aware of the policy. It is a no fault policy. There is a call-in procedure. Every time a corrective action is given, the employee is given a copy of the corrective action.

On December 22, 2015 claimant was late approximately an hour because of weather conditions. Claimant called to let the employer know she was going to be late. On January 2, 2016, claimant was late approximately 30 minutes. Claimant was late due to daycare issues.

The father of claimant's dad was supposed to provide child care, but he did not show up to pick up the kids, and claimant had to find someone else to watch her kids. Claimant called the employer and told it she would be late because of daycare issues. This resulted in a level three corrective action.

On December 21, 2015, claimant was given a second level corrective action. Claimant's daughter had to stay home because of strep throat. Claimant had a doctor's note, which she provided to the employer. Claimant was not aware that doctor's notes did not excuse absences. Claimant was warned that her job was in jeopardy if she received another corrective action. On December 9, 2015, claimant had a first level corrective action. Claimant was tardy because of daycare. On June 23, 2015, claimant had a third level corrective action. Claimant was tardy because of daycare and spouse. Claimant was warned her job was in jeopardy. On June 1, 2015, claimant received a second level corrective action. Claimant was tardy because of daycare and spouse. On May 21, 2015, claimant received a first level corrective action. Claimant was tardy because of daycare and spouse.

Claimant's daycare opened at 6:30 a.m. Claimant's spouse used to take the kids to daycare because she worked at 7:00 a.m. When claimant's spouse left, she struggled getting kids to daycare and then to work on time. On December 15, 2015, claimant's schedule was changed to have her start at 7:30 a.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. On December 21, 2015, claimant received her third corrective action at a level two or higher in approximately the last seven months. Claimant was warned that her job was in jeopardy if she received another corrective action. Claimant was then tardy to work on December 22, 2015 because of the weather and on January 2, 2016 because of child care issues, which resulted in a level three corrective action notice. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). This was claimant's fourth corrective action notice at a level two or higher in less than twelve months, in violation of the employer's policy. The employer has established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 28, 2016, (reference 01) unemployment insurance decision is affirmed. 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs