

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA A ROSS

Claimant

APPEAL 14A-UI-11447-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERRARA CANDY COMPANY

Employer

OC: 10/05/14

Claimant: Appellant (1)

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

Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 25, 2014. Claimant participated and was represented by Jean Mauss, Attorney at Law. Employer did not respond to the hearing notice instruction and did not participate. The administrative law judge took official notice of the administrative record, including fact-finding documents.

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 machine operator from March 4, 2013 and was separated from employment on October 2, 2014. She was on a medical leave of absence from April 10, 2013 through October 30, 2013 and again from January 20, 2014 through August 10, 2014. Claimant reported a disputed workers' compensation injury reported on September 22, 2014. She left work early on September 25, 2014 and reported her absence for September 26 after the required call-in time of at least one hour prior to shift start time. Claimant reported her absence on September 29 after the employer's human resource manager spoke to her about properly reporting her absences and after the deadline for reporting an absence for the shift. On September 30 claimant presented a doctor's excuse for September 25, 26, and 29. The same day the employer presented her a warning about attendance, which she refused to sign. She also left work early the same day after becoming upset at a later meeting about training issues and her work restrictions. She called later to say she would not return to complete her shift. On October 1 she called late again to report her absence for the day. Her last absence was on October 2 when she knew she would be assessed an attendance point, but did not report to work in order to leave early for vacation that supervisor Lena had approved on September 3 to begin October 3. The parties dispute whether the October 2 absence was reported.

REASONING AND CONCLUSIONS OF LAW:

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

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). 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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The absences that were properly (timely) reported to the employer about her injury are not considered here. Claimant argues the late calls to report absences on September 26 and October 1 were related to emotional stress and depression from the alleged work injury but presented no medical information to support that argument. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused because it was for an early vacation start that was not preapproved, regardless of whether it was properly reported. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 27, 2014 (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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