

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIKA J COUSINS

Claimant

APPEAL NO. 17A-UI-03588-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AABLE PEST CONTROL INC

Employer

OC: 02/26/17

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Erika Cousins (claimant) appealed a representative's March 20, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Aable Pest Control (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 26, 2017. The claimant participated personally. The employer participated by Lori Price, Operations Manager, Michelle Ashley, Office Manager. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

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 August 8, 2016, as a full-time Waterloo scheduler working Monday through Friday, 8:00 a.m. to finish. Sometimes the claimant had to work on Saturdays. The claimant signed for receipt of the employer's handbook. The claimant was tardy twenty-nine times as of November 3, 2016. The employer agreed to change the claimant's start time to 8:30 a.m. to help her be on time for work. The claimant had problems finding her keys or getting her child to the child's grandparent's house for childcare in the morning. The claimant dealt with issues relating to the stress of being a working mother of a one year old child who often suffered from normal childhood ailments.

After the employer changed the claimant's work hours, the claimant continued to be tardy. On December 16, 2016, and January 3, 2017, the employer issued the claimant written warnings after the claimant was tardy an additional ten times. The employer notified the claimant each time that further infractions could result in termination from employment. On January 31, 2017, the employer issued the claimant a written warning and three-day suspension after the claimant was tardy forty-four minutes. The employer notified the claimant that further infractions would result in termination from employment. All of the claimant's absences were due to being late for the start of her shift in the morning. None of the absences were due to doctor's appointments.

On February 27, 2017, the claimant was thirteen minutes late. On February 28, 2017, the claimant called in sick. On March 1, 2017, the claimant did not appear for work or notify the employer of her absence. At 9:15 a.m. on March 1, 2017, the claimant called the employer and said she overslept due to some medication she was taking. The employer terminated the claimant on March 1, 2017, for attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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.

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). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The claimant's absences on February 28, 2017, and March 1, 2017, were due to illness and may have been properly reported. The tardiness on February 27, 2017, was not due to illness. 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 absence on February 27, 2017, was not excused. The February 27, 2017 absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's March 20, 2017, decision (reference 01) is affirmed. 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs