

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANETTE BARBER
Claimant

APPEAL NO. 07A-UI-06166-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MISSISSIPPI VALLEY SURGERY
Employer

**OC: 05-27-07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 5, 2007. The claimant participated in the hearing. Sue Lohf, Business Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time medical assistant in the pain clinic for Mississippi Valley Surgery from April 16, 2007 to May 29, 2007. The employer's policy states that two unscheduled absences within a 30-day period or six unscheduled absences within a 12-month period is excessive. She was scheduled to work 8:00 a.m. to 4:30 p.m. On April 23, 2007, the claimant left work at 10:00 a.m. because the school called and said one of her children had pink eye; on April 26, 2007, the claimant arrived at 8:08 a.m.; on April 30, 2007, she left at 12:30 p.m. because another one of her children had pink eye and the employer issued her a verbal warning that there were too many tardes and unscheduled absences; on May 1, 2007, she left at 2:55 p.m. to take her son to a specialist because the antibiotic eye drops were not working on his pink eye and after that appointment she notified her supervisor she had a follow-up appointment with the specialist May 15, 2007; on May 11, 2007, she left at 3:15 p.m.; on May 15, 2007, she left at 3:00 p.m. to attend her son's follow-up appointment; on May 18, 2007, she left at 11:45 a.m.; on May 21, 2007, she left at 12:30 p.m.; on May 23, 2007, she arrived at 8:15 a.m. and left at 4:15 p.m.; on May 25, 2007, she left at 10:45 a.m. because her oldest son had pink eye; and on May 29, 2007, she called and reported she would not be in. She testified that her sister was her childcare provider and called her the morning of May 29, 2007, and said she had been involved in a domestic dispute and the Davenport Police were on their way so the claimant had to stay home with her children because her mother, who was her back-up babysitter, was not available due to a medical condition. The claimant was coded as sent home due to a low census April 26, April 27, May 3, May 9, May 10, and May 24, 2007. The employer terminated the claimant's employment due to excessive absenteeism May 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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). While five of the claimant's eleven absences during the approximately six weeks she worked for the employer were due to the properly reported illness of her children, one was due to a childcare problem, two were due to tardiness, and four were due to leaving early. Although the claimant contends she was sent home on the days she left early, the employer codes the absences specifically as sent home early due to low census and provided six additional dates when the claimant was sent home early for that reason. The employer has established that the claimant was warned about her attendance and that the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 18, 2007, reference 01, decision is affirmed. The 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw