

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KELLY L SIMON**  
Claimant

**INVENTORY TRADING COMPANY**  
Employer

**APPEAL 14A-UI-13278-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/30/14**  
**Claimant: Respondent (1)**

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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 employer filed an appeal from the December 16, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2015. Claimant participated. Employer participated through company president/owner Patrick Einarsen; supervisors Nancy Bakey and Barb Steffen; and general manager Carol Engelken. Employer's Exhibits One through Seven were received.

**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 and was separated from employment on December 2, 2014 when she was discharged (Employer's Exhibit One). Her last absence was on December 1 when the employer time card report indicated she called in sick. It was not until the record was printed for the unemployment insurance claim response that a hand-written notation was made that the call was made after the scheduled start time of 6:00 a.m. (Employer's Exhibit Two, p. 3). In contrast, on May 12, 2014 the time card report indicated in the type-written notes that the claimant called in late at 6:02 a.m. to report her absence (Employer's Exhibit Four, p. 4). Claimant called in before her shift start time on December 1 to report her absence due to illness. She had been warned in writing on May 19 and September 29, 2014 about her attendance and punctuality (Employer's Exhibits Four, 5, 7). Her cousin, who provided transportation during the last several months of employment, was tardy on the same days as claimant. He was not disciplined to the same extent. The employer's policy requires absences be reported but does not specify that absences must be reported *in advance of the shift start time* (Employer's Exhibits Three and Six), only that they be reported "as soon as possible" (Employer's Exhibit Three, p. 2).

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. 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, supra*.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. Since the final absence was related to reported illness, the only remaining question is whether it was *properly* reported. Although there is no written policy about reporting absences in advance of the shift start time, the record reflects that it was the verbal understanding of the parties. The claimant's testimony that her absence was properly reported in advance of her shift start time is credible because the employer did not indicate a specific time it alleges the call was made late and did not make a notation of the alleged lateness of the call in the original time card report as it had done on an earlier occasion. The ALJ recognizes the claimant's excessive tardiness with warnings but because the last absence was related to properly reported illness, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The December 16, 2014 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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**NOTE TO CLAIMANT:** While under medical maternity care and leave, a claimant is not considered able to or available for work and is not eligible for benefits. Refer to the Claimant Handbook <http://www.iowaworkforce.org/ui/handbook.htm> and/or the local Iowa Works office for more information.