

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOGUSLAWA E FALKIEWICZ
Claimant

FOODS INC
Employer

APPEAL NO. 13A-UI-009077-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated July 30, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism on May 14, 2013 and benefits are denied. A hearing was held on September 11, 2013. The claimant participated. Steven Graham, Store Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on August 31, 1999, and last worked as a full-time courtesy counter employee on May 13, 2013. The claimant received the employer attendance policy that provides for progressive discipline.

Although claimant had some tardiness problem during her employment, the problem became more acute when she lost her personal transportation in February and had to use cab service. Claimant's job is important to the employer because she helps to prepare the store before it is opened for business. Claimant is scheduled to start work at 5:30 a.m.

The employer issued claimant a written warning for excessive tardiness on April 23, 2013. She signed for the receipt of the warning. It notes she was late for opening three days in a row, April 21 (98 minutes, April 22 (95 minutes) and April 23 (10 minutes). On April 29, claimant was issued a final warning for tardiness. She was late on April 28 (55 minutes) and April 29 (15 minutes). She signed for the warning and put on notice a further issue would result in employment termination.

Claimant felt ill on May 13 about 4:30 a.m. but did not attempt to call the store though it is open 24/7. She overslept and did not call in until 6:30 a.m. The store manager told claimant not to

come in as someone else was covering her work shift. The employer terminated claimant the next day for excessive unexcused tardiness.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer established misconduct in the discharge of the claimant on May 13, 2013, for excessive "unexcused" tardiness.

The employer disciplined claimant with a written warning and a final written warning that it could no longer tolerate her tardiness to work. While it is unfortunate claimant lost her personal transportation and was relying on cab service, this is a personal matter that does not excuse her reporting to work on time. As to the final incident, oversleeping that caused her to report a late to work is not excusable. Job disqualifying misconduct is established.

DECISION:

The decision of the representative dated July 30, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on May 14, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css