

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRA KIMBERLEY
Claimant

APPEAL NO: 13A-UI-13028-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 01/06/13
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 November 18, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 17, 2013. The claimant participated in the hearing. Shaphan Smith, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three 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 morning stocker for Menards from July 11, 2013 to October 28, 2013. She was discharged from employment due to a final incident of absenteeism that occurred on October 28, 2013.

The employer uses a 10 point, no-fault attendance policy based on a rolling 90-day period (Employer's Exhibit One). It allows a five minute grace period for tardiness before an employee begins accumulating points. If an employee is more than five minutes late but less than 60 minutes late and calls the employer to report her tardiness she receives one point; if she is more than five minutes late but less than 60 minutes late and does not call the employer to report her tardiness she receives two points; if she is more than 60 minutes late and calls the employer to report her tardiness she receives three points; and if she is more than 60 minutes late and does not call the employer to report her tardiness she receives five points. Properly reported full day absences are assessed three points. Improperly reported full day absences and no-call no-shows are assessed five points. Absences accompanied by doctor's notes are considered excused and no points are assessed.

If an employee accumulates between one and eight points she receives a written warning; if she accumulates nine points she receives a three day suspension; and if she accumulates 10 points termination occurs (Employer's Exhibit One).

The claimant was seven minutes tardy September 12, 2013, without calling the employer and received two points and a written warning; she was 12 minutes tardy October 12, 2013, called the employer to report she would be late and received one point and a written warning; she was 22 minutes tardy October 15, 2013, called the employer to report she would be late and received one point and a written warning; she was 22 minutes tardy October 17, 2013, called the employer to report she would be late and received one point and a written warning; she was 88 minutes tardy October 22, 2013, called the employer to report she would be late and received three points and a written warning; and she was six minutes tardy October 28, 2013, without calling the employer to report she would be late and received two points and her employment was terminated for exceeding the allowed number of attendance points within the rolling 90 day period (Employer's Exhibits Two and Three).

There is no evidence that these absences were related to illness. She did not receive a suspension because she jumped from eight points to ten with one absence (Employer's Exhibit One).

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).

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and 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 November 18, 2013, reference 02, 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/pjs