

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUEVETTA M VAUGHN
Claimant

APPEAL NO: 07A-UI-02590-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

V A M INC
GODFATHERS PIZZA
Employer

OC: 02/04/07 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 8, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 29, 2007. Claimant participated. Employer participated through Danielle Anderson and Vance Mennen and was represented by Craig Ament, Attorney at Law. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time counter clerk from February 2006 until October 23, 2006 when she was discharged. On Friday, October 20 claimant called her supervisor Danielle Anderson and asked for Monday, October 23 off from work. Anderson told her she had the day off and did not contact her thereafter to tell her she had to work. Claimant did not check the schedule posted on Saturday since she had the approval from Anderson on Friday. She had other absences related to surgery and trips to the emergency room and provided medical excuses to employer for those dates. She was tardy on one occasion due to oversleeping. Employer had not warned her that her job was in jeopardy about attendance or any other reason prior to the separation.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 claimant was entitled to fair warning that the employer was no longer going to tolerate her performance and conduct. Without fair warning, preferably in writing, the claimant had no way of knowing that there were changes she needed to make in order to preserve the employment. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The final absence was approved in advance, thus employer has not established a current or final act of misconduct. Benefits are allowed.

DECISION:

The March 8, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs