

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADJO A PASSASH
Claimant

APPEAL NO. 13A-UI-10089-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 07/21/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on October 10, 2013. Claimant participated and was represented by Laura Jontz, Attorney at Law. Employer participated through (representative) Julie Kilgore, Vice-President of Human Resources and Adam Maus, Director of Environmental Services. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an environmental services representative beginning on August 1, 2011 through July 26, 2013, when she was discharged. The claimant received a copy of the employer's handbook which put her on notice that an employee could be discharged anytime they reached seven or more attendance points. The employer chose to let the claimant go over seven attendance points. The claimant was given a final written warning on June 5, 2013 that clearly put her on notice that she could be discharged for any additional attendance infractions. The claimant was eleven minutes late to work on July 2. The employer did not discover the claimant was late on July 2, until July 24, she was discharged two days later. The employer relies upon reports run to disclose attendance issues. The claimant was not as credible as the employer. The claimant testified that she always punched into work at 5:55 p.m. Yet the employer's records illustrate that in the last two months of her employment, the claimant punched in five minutes early on only two occasions. The time clock was not broken on July 2, the claimant was simply late. In light of the employer's lenience, they could have discharged her when she reached seven points, and the claimant's written warning, the record establishes that the claimant had excessive unexcused absences. The claimant's future FMLA use had no bearing on her discharge. The claimant was not discharged because she was going to need FMLA in January 2014, but because she simply had poor excessive unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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). An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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, claimant's tardiness on July 2 in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

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 because it was not for an illness, injury or other matter of an emergency nature. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 28, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css