

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON LLOYD

Claimant

APPEAL NO: 13A-UI-00697-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FINANCIAL GROUP INC

Employer

OC: 12/09/12

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Shannon Lloyd (claimant) appealed an unemployment insurance decision dated January 9, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Pinnacle Financial Group, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2013. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time collection agent from February 24, 2003 through April 26, 2012 when she was discharged for job abandonment. She had been previously warned for attendance and was advised that her next step would be a three-day suspension. The claimant left work on April 24, 2012 at lunch and failed to return. She called her supervisor and said that she would not be back after lunch. The supervisor asked her if she would be back the next day and the claimant stated that she did not know.

The claimant was a no-call/no-show on April 25, 2012 and she called after the start of her shift on April 26, 2012. She testified that she was going to ask about taking paid time off or a personal leave under the Family Medical Leave Act (FMLA). The claimant spoke to her supervisor who told her that she had received an email stating the claimant was terminated. The claimant had left town for two weeks due to marital problems and mental issues.

David Schwartz, M.D., provided an undated letter which the claimant submitted into evidence. Dr. Schwartz wrote that the claimant had been under treatment for depression and anxiety that came to a head in early April 2012. Other than to state the claimant's medical problems came to a head in early April 2012, the doctor did not provide dates of treatment. He also added that, "As a result of the illness she left her family and place of employment and temporarily left the state."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 26, 2012 for 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(7).

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Id.* The claimant had been warned about her attendance but excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant contends her absences were due to illness but acknowledges they were not properly reported.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absences were not excused. The final absences, in combination with the claimant's history of absenteeism, are considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated January 9, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll