

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ROBERT W WILLIAMS  
1154 MARK ST  
COLONA IL 61241

NEW CHOICES INCORPORATED  
NCI  
2501 – 18<sup>TH</sup> ST STE 201  
BETTENDORF IA 52722

Appeal Number: 04O-UI-02914-LT  
OC 09-07-03 R 12  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Employer filed a timely appeal from the October 1, 2003, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 30, 2004. Claimant did participate. Employer did participate through Debra Dickenson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time direct care associate through September 8, 2003, when he was discharged. He was a no-call/no-show on August 30, 2003. He was on the schedule but had not turned in a TOR (time off request). He asked permission from a supervisor, Jenny Kay,

who was to take over supervision at claimant's work site on September 1, 2003. She told claimant she would not be in charge there until September 1 and he needed to contact Ann Schmidt, the supervisor through August 30. He did not contact Ms. Schmidt and she called him after the shift had started and he had not reported to work. He said he did not know he had to work, she told him he had not contacted her as instructed. Claimant told her he could not work but called a half hour later and said he would work if no one else could. She had already filled the shift since there generally is only one person working at that location.

Employer warned claimant in writing on February 4, 2003 about a January 28, 2003 no-call/no-show. Employer put hours for claimant on the schedule without telling him. Those hours conflicted with his schedule at an ambulance service of which employer was aware. He was also tardy on January 18, 2003 due to car trouble. He called to notify employer of the incident, traded cars, and reported to work. Other absences were related to his personal illness, or the illness of a dependent family member.

Claimant had a problem with working on August 30 because he believed employer wanted him to pass medications for which he is not certified. Employer asked him to get out the medication cassette and tell residents to take their pills, not to put the meds in the residents' hands or mouths. The state had not specifically approved this procedure until after claimant's 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 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).

More concise and clear communication by both parties about the medication issue and the scheduling may have avoided this separation. Unfortunately, that did not happen. The reported absences related to illness are all excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. It is not a no-call/no-show absence if employer does not give reasonable notice to an employee that they are scheduled to work. The January 28, 2003 absence is excused. One unexcused absence without prior warning or a history of other absences, other than one incident of tardiness, is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The October 1, 2003, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/b