IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MARY L BROOKS
Claimant

FAMILY DOLLAR SERVICES INC
Employer

APPEAL NO. 11A-UI-06258-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mary Brooks (claimant) appealed a representative's May 4, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Family Dollar Services (employer) for excessive unexcused absenteeism after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 7, 2011. The claimant participated personally. The employer participated by Leiah Douglas, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on August 13, 2007, as a full-time repack order filler. The claimant signed for receipt of the employer's second handbook on July 18, 2008. The employer issued the claimant written warnings on February 4 and March 16, 2011, for excessive absenteeism. The claimant properly reported absence due to illness ten times. She properly reported absences due to personal reasons nine times. The employer notified the claimant that further infractions could result in termination from employment.

On April 6, 2011, the claimant properly reported that she was absent to take care of her two-year-old grandson. The employer terminated the claimant on April 11, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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. 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 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, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's May 4, 2011 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs