

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY A CARTER**  
Claimant

**APPEAL NO. 13A-UI-09348-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**D OF S FOODS INC**  
Employer

**OC: 07/14/13**  
**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 12, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on October 2, 2013. Claimant participated. Employer participated through Karla Shedd, Human Resources Generalist. 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 a shift-manager when she was rehired on May 28, 2013 through July 5, 2013, when she was discharged. The claimant previously worked for the employer from March 29, 2012 through February 23, 2013. Her previous discharge was due at least in part to her poor attendance. The claimant called in sick to work on June 2, 2013. She texted the employer on June 25 indicating that she would not be into work the next day June 26. This was the claimant's second day of missed work in less than her first month back on the job. She was allowed to continue working but on June 28 was given a final warning for attendance and specifically was told that one more occurrence within the next 90 days of her employment would lead to her discharge. The claimant had July 3 and 4 off work and wanted July 5 off to go to Chicago to visit her mother who had sustained work-related injury a couple of weeks prior. The claimant was not granted July 5 off as a vacation day and knew she was not to miss work. She called in on July 5 and reported that she needed to be with her mother. Her mother had been injured weeks before. The claimant simply wanted to spend time with her mother. She missed three days of work in less than five weeks of employment. She had been discharged previously due to her attendance. Mere reporting of an absence to the employer does not mean that the absences are excused.

**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, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The August 12, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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