

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

NICOLE M YOUNG
APT # 2301
2604 N 4TH ST
CLINTON IA 52732

DM SERVICES INC
1515 S 21ST ST
CLINTON IA 52732

JOHN GRAUPMANN
LEGAL ASSISTANT
1401 HARBORVIEW BLDG
726 FEDERAL ST
DAVENPORT IA 52803

Appeal Number: 04A-UI-09022-LT
OC 07-25-04 R 04
Claimant: Appellant (2)

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:

Claimant filed a timely appeal from the August 12, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 19, 2004. Claimant did participate and was represented by John Graupmann, Legal Assistant. Employer did participate through Sheree Banks.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time credit analyst/collector through May 17, 2004 when she was discharged. Claimant reported for work and 30 minutes later, employer instructed claimant and others to move their cars from the street on May 13 and were required to clock out to do so which made the claimant tardy. Claimant was not aware that she was not allowed to park her car in the street or that employer would require her to move it. The last incident of tardiness was in February 2004. Employer did not present evidence that claimant had parked on the street prior to the final incident or had incurred other tardy minutes because of this reason. Claimant had tardiness problems early in her employment due to child care issues, which she corrected by February 2004.

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.

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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).

The employer’s no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. One incident of tardiness in a three-month period is not considered excessive. Furthermore there had not been a prior problem with parking in the street, thus employer artificially created the tardiness situation. Benefits are allowed.

DECISION:

The August 12, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/