

**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**

**MARCIA COLLINS
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IOWA CITY IA 52245**

**DILLARD DEPARTMENT STORES INC
ATTN MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110**

**Appeal Number: 06A-UI-07723-H2T
OC: 07-02-06 R: 03
Claimant: Appellant (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) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 25, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 17, 2006. The claimant did participate along with witness Chelsea Bryant. The employer did participate through Debbie Fowler, Store Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales associate part time beginning July 25, 2005 through July 4, 2006, when she was discharged. When she was hired, the claimant had an agreement with the employer that she would be able to leave work early when paged to go to her other job as a surgical technician. The claimant was required to provide notes from her other employer indicating that she had in fact been paged into work. The claimant's work record shows that while she did leave work early on a number of occasions to attend to her other job, she was also tardy or late without excuse on many occasions.

The claimant clocked out six minutes early on July 1, ostensibly to attend to her other job which had paged her to report to the hospital. The claimant was not scheduled to work again until July 4. She was asked to come into work on July 3 to help with inventory. She reported to work on July 3, even though she had not been scheduled to work that day, since she had been asked to come in. When she worked on July 3, she did not provide a note to her supervisor excusing her from leaving work early on July 3. On July 4, the claimant stopped to pick up a coworker who needed a ride to work, so she did not have time to stop at the hospital to pick up a note to cover for her leaving early on July 1, 2006. The claimant was discharged by Nick, the supervisor on the morning of July 4, 2006, for failing to provide a note excusing her on July 1. The claimant had been previously told by Nick that she needed to provide a note excusing her from work on the next day she worked after she missed work to attend to her hospital technician work. Later in the afternoon of July 4, after she had already been discharged, the claimant returned to the employer's workplace and gave Elaine, who was staffing the courtesy desk, a note covering her absence for July 4. She asked Elaine to pass the note on to Nick. The claimant was warned on March 22, when she also punched out early, that one more unexcused incident of leaving early or arriving late would result in her discharge. The claimant had been given a copy of the employer's attendance policy and knew that leaving early without providing a note was a violation of the employer's policy.

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 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).

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 claimant knew she was to bring in the note excusing her from work on the next day she worked. The claimant did not bring the note in on July 3, the next day she worked. Nor did she bring the note with her when she arrived at work on July 4. The employer had made it clear to her that the notes were to be provided in a specific manner at a specific time. Since the claimant's leaving early on July 1 amounted to her ninth incident, she was discharged. The claimant had the option of picking up the note from the hospital on July 1, 2, 3, or before she went to work on July 4, but she chose not to. Her choice to pick up a coworker does not excuse her responsibility to provide the note in the manner prescribed by the employer. Because the claimant did not properly follow the clear procedures set by the employer, her absence on July 1 was not excused and amounted to a final incident. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 25, 2006, 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.

tkh/kjw