

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

TEENA T SELLERS
2351 PLEASANTVIEW DR #E-2
MARION IA 52302

ALDI INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02677-CT
OC: 02/08/04 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 for Misconduct

STATEMENT OF THE CASE:

Teena Sellers filed an appeal from a representative's decision dated March 2, 2004, reference 01, which denied benefits based on her separation from Aldi, Inc. After due notice was issued, a hearing was held by telephone on March 31, 2004. Ms. Sellers participated personally. The employer participated by Terry Nichols, District Manager, and Lori Doeden, Store Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Sellers was employed by Aldi, Inc. from June 4, 2003

until January 21, 2004. She worked from 20 to 40 hours each week as a cashier. Ms. Sellers was discharged due to repeated tardiness after being warned. She was late to work on October 15, 16, and 18. The tardiness ranged from 5 minutes to 16 minutes. On October 24, she received a written warning which addressed, among other things, the fact that she had been late to work on multiple occasions.

In late November, Ms. Sellers' personal vehicle was totaled and she began using the bus to get to work. Because of continuing problems with tardiness, the district manager met with her on December 9 and advised her that she would be replaced if the problem with tardiness did not improve. The decision to discharge was based on the fact that Ms. Sellers was 12 minutes late on January 21. She was late on this occasion because her bus was late.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Sellers was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Sellers was discharged for repeated tardiness in reporting to work. The issue was first discussed with her on October 24 after she had accumulated three occasions of tardiness. The evidence of record does not establish any reasonable cause for the tardiness and, therefore, it is considered unexcused. In spite of the discussion of October 24, Ms. Sellers continued to be late. Although the specific dates of occurrences between October 24 and December 9 are unknown, the fact remains that her continued tardiness caused the district manager to have to speak to her about tardiness on December 9.

Ms. Sellers was clearly on notice as of December 9 that her tardiness was jeopardizing her continued employment with Aldi, Inc. In spite of the warning, she was again late on January 21 because her bus was late. Absence from work caused by matters of purely personal responsibility, such as transportation, is not considered excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). This is true even where the individual's transportation issues are related to public transportation. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). Ms. Sellers had at least four occasions of unexcused tardiness during a period of approximately three months. The administrative law judge considers this excessive. Excessive unexcused tardiness in reporting to work is clearly contrary to the standards an employer has the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 2, 2004, reference 01, is hereby affirmed. Ms. Sellers was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b