

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M SHIPLEY
Claimant

APPEAL NO. 09A-UI-11691-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER VILLAGE INC
Employer

**Original Claim: 07/12/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Teresa Shipley filed an appeal from a representative's decision dated August 10, 2009, reference 01, which denied benefits based on her separation from Center Village, Inc. After due notice was issued, a hearing was held by telephone on September 30, 2009. Ms. Shipley participated personally. The employer participated by Kathy Newman, Administrator, and Amy White, Social Worker.

ISSUE:

At issue in this matter is whether Ms. Shipley was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Shipley was employed by Center Village, Inc. from June 30, 2008 until July 10, 2009. She worked full-time in the activities department. She was discharged because of her attendance.

Ms. Shipley was given a written warning on December 1 because she was absent without notice on November 27 and 28. She thought she was not scheduled to work the Thanksgiving holiday but had not been told she was relieved from working. She received additional warnings about her attendance on February 17 and April 16. She was given a written warning on May 14 after she was late reporting to work on four occasions that month. Her work hours were changed at that point. Ms. Shipley's last warning regarding attendance before discharge was on May 29 and signed by her on June 1. She was advised that she would be discharged if there were further attendance issues.

Ms. Shipley reported to work on time on July 5 but left shortly thereafter. She left a voice message for her supervisor to the effect that she had personal things she needed to take care for an appointment on July 6. The supervisor called her back at approximately 10:00 a.m. and told her she needed to return to work, which she did. She was scheduled off on July 6 and worked on July 7. She was also scheduled off on July 8. She was on time and worked her complete shift on July 9. The decision to discharge was due to the fact that she was 10 minutes late on July 10 without any prior notice to the employer. She was discharged later that day over the telephone. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Ms. Shipley was amply warned that her attendance was unacceptable and was jeopardizing her continued employment. In spite of prior warnings, she was late reporting to work on four occasions in May of 2009. The administrative law judge appreciates that she had small children to get ready in the mornings. However, it was her responsibility to make sure she had sufficient time to take care of her family needs and report to work on time. Because there was no good cause for the tardiness, it is unexcused.

Ms. Shipley signed a final written warning on June 1 and was advised at that time that further issues could result in her discharge. In spite of the warning, she left work without first speaking with her supervisor on July 5. There was no emergency that required her to leave when she did. The fact that she came back to work when directed to do so does not alter the fact that she missed some portion of work time for personal reasons. Because it was for personal reasons, the partial absence of July 5 is unexcused. Ms. Shipley was then ten minutes late on July 10 without any prior notice to the employer.

Given the number of prior warnings she received, the administrative law judge concludes that Ms. Shipley's four occasions of tardiness in May, the partial absence of July 5, and the one occasion of tardiness on July 10, are sufficient to establish excessive unexcused absenteeism. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated August 10, 2009, reference 01, is hereby affirmed. Ms. Shipley was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw