

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

CHRISTINE L KENKEL  
2011 HORSESHOE DR  
DUBUQUE IA 52001-8025

P J IOWA  
PAPA JOHN'S PIZZA  
5335 MERLE HAY RD #3-280  
JOHNSTON IA 50131

Appeal Number: 06A-UI-08130-S2T  
OC: 07/02/06 R: 04  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

P J Iowa (employer) appealed a representative's August 10, 2006 decision (reference 03) that concluded Christine Kenkel (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2006. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Elizabeth Gregan, Area Manager. Mark Hauder observed the hearing. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 12, 2003, as a driver. The employer issued the claimant a written warning on April 15, 2006, for cash shortages. On April 24, 2006, the employer issued the claimant a written warning for cash shortages and tardiness. The employer warned the claimant that further infractions would result in her termination from employment. On May 4, 2006, the employer verbally warned the claimant about her reoccurring tardiness.

On May 10, 2006, the claimant did not appear for work or notify the employer of her absence. Later that day the claimant telephoned the employer and asked when she was supposed to work. The employer told the claimant that her shift had started two hours previously. The schedule had been posted since May 4, 2006. The employer terminated the claimant on May 10, 2006, for absenteeism and cash shortages.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified 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 representative's August 10, 2006 decision (reference 03) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

bas/pjs