

**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**

**JULIE A LEWIS  
1413 S 2<sup>ND</sup> ST  
OSKALOOSA IA 52577-3925**

**MAHASKA COUNTY HOSPITAL  
ATTN ADMINISTRATOR  
1229 C AVE E  
OSKALOOSA IA 52577**

**Appeal Number: 06A-UI-05964-S2T  
OC: 05/14/06 R: 03  
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)

871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Mahaska County Hospital (employer) appealed a representative's May 31, 2006 decision (reference 01) that concluded Julie Lewis (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2006. The claimant participated personally. The employer participated by Kim Langfitt, Human Resources Assistant; Sandra Edwards, Environmental/Linen Service Director; Dave Leighton, Human Resources Director; and Joe Hohenberger, Chief Financial Officer.

#### 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 August 5, 2003, as a full-time environmental services technician. The claimant signed for receipt of the company's Personnel Policy Manual on August 19, 2003. The employer issued the claimant warnings for absenteeism on November 7, 2004, January 24 and November 16, 2005. The employer issued the claimant warnings for absenteeism and failure to properly report her absences on April 27, May 26, 2004, August 24, 2005, and May 1, 2006. The employer warned the claimant that further infractions could result in her termination from employment. The claimant had 22 occurrences of failure to appear for work or notify the employer of her absence.

The claimant's physician excused her from work from April 26 to May 7, 2006. The employer put the claimant on the schedule for work starting May 11, 2006. In a meeting on May 10, 2006, the employer notified claimant that she had to provide her physician's note before May 12, 2006, so she could return to work. The employer also warned the claimant she would be terminated if she did not work on May 14, 2006.

The claimant was released to return to work by her physician on May 11, 2006. The claimant's mother supplied the note to the employer. The employer told the mother it was good because the posted schedule showed the claimant was supposed to work that evening. The claimant did not appear for her scheduled shift at 10:30 p.m. or notify the employer of her absence. She went to a doctor's appointment for her child.

On May 14, 2006, the claimant appeared for work but left without notice after one hour. The employer terminated the claimant for excessive absenteeism after warnings.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony and the physical evidence were conflicting. The claimant testified she had always notified the employer of her absences. The warnings for failure to properly report were signed by the claimant.

#### 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. 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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$1,205.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The May 31, 2006, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$1,205.00.

bas/cs