

**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**

**CINDY L JONES
PO BOX 142
MOUNT PILLAR IA 52759**

**RIVERSIDE STAFFING SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03375-H2
OC 02-22-04 R 04
Claimant: Appellant (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, 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) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Davenport, Iowa on June 10, 2004. The claimant did participate along with her daughter Crystal Jones. The employer did participate through Karrie Minch, Senior Staffing Consultant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general labor assigned at NIS beginning December 11, 2003 through December 29, 2003 when she was discharged. A representative from NIS called

Ms. Minch and told her that because the claimant had called in off work on December 26, 2003 to take her sister who was in labor to the hospital, they no longer wished to continue her employment. Ms. Minch, from the employment agency, Riverside Staffing Services, called the claimant and left her a message indicating that her assignment had ended because she missed one day of work. Riverside Staffing knew that the claimant's assignment had ended because they were the ones who actually told her the assignment had ended.

The claimant was treated for a work related injury, but has now been released to return to work without restrictions. The claimant is not currently receiving any workers compensation benefits. After being let go from NIS, the claimant notified the employer that she wanted other assignments by calling in, but was told that no other work was available for her. The final absence occurred on December 26, 2003 when the claimant called in and reported her absence so she could take her sister, who was in labor, to the hospital. She had no other instances of absenteeism or warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 claimant had only one absence from work which was properly reported to her employer. A failure to report to work without notification to the employer is considered an unexcused absence. One unexcused absence without prior warning or a history of other absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The March 18, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The claimant is able to and available for work.

tkh/kjf