

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LISA J ZIMMERMAN**  
Claimant

**ALS CORNER OIL CO**  
Employer

**APPEAL 15A-UI-04630-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/15  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 7, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 27, 2015. Claimant participated. Employer participated through Chris Drake, Supervisor. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a clerk and deli worker beginning on May 29, 2002 through March 24, 2015 when she was discharged.

The claimant was late to work on August 8, 2013; May 4, 2014; and March 21, 2015. On all of the occasions she was late because she overslept. She had no warnings about anything other than her attendance and in her almost 13 years of employment; her only unexcused absences were the three incidents of tardiness detailed above. She was given a final written warning on May 4, 2014 that put her on notice that any future incidents of tardiness could lead to her discharge.

**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 § 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.

Iowa Admin. Code r. 871-24.32(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's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. In order to be disqualifying for the purposes of unemployment insurance benefits an employer must establish that a claimant had excessive unexcused absenteeism. There is no doubt that all three of the claimant's absences due to oversleeping are considered unexcused. However, the administrative law judge cannot conclude that three incidents of unexcused absences during a period of 13 years meets the excessiveness standard required to impose disqualification.

Additionally, the employer made clear that the claimant was discharged due to the attendance issue. While the claimant did have an issue with alleged failure to perform her job duties, she had no warnings that she needed to change her behavior in order to preserve her employment. Without fair warning an employee has no way of knowing changes are needed. Since the employer has not established excessive unexcused absenteeism, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 7, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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