

**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**

**PENNY R NORTH  
1005 SYCAMORE ST  
JANESVILLE IA 50647**

**PARCO LTD  
WENDY'S OLD FASHIONED HAMBURGER  
998 FREMONT AVE  
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-08196-LT  
OC: 07-03-05 R: 03  
Claimant: Respondent (1)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 1, 2005, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on August 25, 2005. Claimant did not participate. Employer did participate through Pam Pray.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time co-manager from April 25, 2005 through June 15, 2005 when she was discharged. Claimant failed to show up for her shift on June 15. She called in on June 14 and told the store manager she was not comfortable working a final day at this location before she transferred to another store in the same town. Pam Pray, director of human resources left

claimant a message and asked her to call back the next day but she did not do so until three hours into her shift and did not work as scheduled on June 15. Claimant had missed her first two weeks of employment due to illness and had no other instances of absenteeism or warnings related to attendance thereafter.

Employer used a three-strike policy in discharging claimant. First, that she inappropriately sent flowers (whether as a joke or not) to a subordinate; second, that she failed to call Pray back on June 14; and third, that she failed to report for her shift on June 15.

#### 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).

When considering past acts and warnings to determine the magnitude of a current act of misconduct pursuant to 871 IAC §24.32(8), the earlier misconduct must relate to the final act that resulted in the termination in order to establish a pattern of conduct. See, Flesher v. IDJS, 372 N.W.2d 230, 234 (Iowa 1985).

Thus, since the final act was the absence of June 15, the related past acts would be the absenteeism due to illness, not the conduct surrounding the flowers or the failure to return a call the same day.

Reported absences related to illness are excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is

generally considered an unexcused absence. However, claimant did notify employer of her absence even though she did not have a valid reason for the separation and it was considered unexcused. One unexcused absence without a prior history of other unexcused absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The August 1, 2005, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/s