

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JONI L O'DELL**  
Claimant

**APPEAL NO. 07A-UI-05306-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 04/08/07 R: 01**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Joni O'Dell filed an appeal from a representative's decision dated May 17, 2007, reference 02, which denied benefits based on her April 2, 2007 separation from Advance Services, Inc. After due notice was issued, a hearing was held by telephone on June 8, 2007. Ms. O'Dell participated personally. The employer participated by Brandie McFarland, Office Manager.

**ISSUE:**

At issue in this matter is whether Ms. O'Dell was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. O'Dell began working for Advance Services, Inc., a temporary placement firm, in December of 2004. She was assigned to work for ConAgra from December 6, 2004 until April 26, 2006 and again from May 1, 2006 until April 2, 2007. She was removed from the assignment due to her attendance.

All ConAgra employees started calendar year 2007 with zero attendance points. Ms. O'Dell was absent on February 4 because she did not have anyone to care for her grandchildren after their mother failed to pick them up as scheduled. She was 30 minutes late for work on February 18, 2007 because she overslept. She was one hour late on April 1 because she overslept. As a result, Ms. O'Dell was discharged from the assignment on April 2. She had received warnings regarding her attendance.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. O'Dell filed a claim for job insurance benefits because she was unemployed after being discharged from an assignment on April 2. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was

discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Ms. O'Dell accumulated three unexcused absences during the three months she worked at ConAgra in 2007. The tardiness of February 18 and April 1 is unexcused as both occasions were due to oversleeping, which is not reasonable grounds for missing work. The absence of February 4 is unexcused as it was due to a personal matter, lack of childcare for her grandchildren. Absences caused by matters of purely personal responsibility, such as child care, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. O'Dell had been warned about her attendance. In spite of the warning, she was an hour late reporting to work on April 1.

The administrative law judge considers three unexcused absences in three months to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons stated herein, the administrative law judge concludes that Ms. O'Dell is not entitled to job insurance benefits because of her April 2, 2007 separation from employment.

**DECISION:**

The representative's decision dated May 17, 2007, reference 02, is hereby affirmed. Ms. O'Dell was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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