

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

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Appeal Number: 05A-UI-04793-H2T
OC: 04-03-05 R: 01
Claimant: Appellant (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 21, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 25, 2005. The claimant did participate. The employer did participate through Dennis South, Program Coordinator, Jim Poehlman, Executive Director and was represented by Lynn Corbeil of Johnson & Associates. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a direct support associate full time beginning April 28, 1995 through

April 6, 2005 when she was discharged. The claimant was discharged from employment due to a final incident of absenteeism that occurred on April 5, 2005 when she was 11 minutes late to work. The claimant was last warned on March 1, 2005, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on January 10, (tardy 12 minutes), January 11 (left early for a doctor's appointment), January 12 (tardy 18 minutes late due to weather excused no points for that day), January 17 (tardy 8 minutes), January 26 (tardy 15 minutes), January 27, (absent, called in sick), February 3, (tardy 1 hour and 26 minutes), February 7, (tardy 1 hour and 30 minutes late, alarm did not go off), February 8, (tardy 20 minutes), February 9, (absent, roads not clear, although other employees made it in to work that day), February 10, (tardy, 30 minutes), February 12, (tardy 30 minutes), February 14, (20 minutes tardy), February 20, (tardy 10 minutes), February 23, (tardy 9 minutes), March 1, (tardy 9 minutes), April 5 (tardy 11 minutes). The employer adjusted the claimant's schedule to have her begin work at 6:30 a.m. Monday through Friday so that she could have consistency on her start time. The claimant was also instructed to purchase a battery alarm clock to facilitate getting to work on time. Because the employer's business requires that dependent adults receive care, when the claimant was late it was a burden on other employees who were required to cover her shift and not allowed to leave until she arrived for work. At the time claimant was disciplined, she never questioned the time she was tardy until she was discharged.

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. 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 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 absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 21, 2005, reference 01, decision is affirmed. 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.

tkh/pjs