

**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**

**JULIE A YOUNG
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**CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
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OMAHA NE 68106-6007**

**Appeal Number: 05A-UI-01452-LT
OC: 01-09-05 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Employer filed a timely appeal from the February 3, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 28, 2005. Claimant did participate. Employer did participate through Cindy Werling and Harold McElderry and was represented by Roxanne Bekaert of Johnson & Associates. Employer's Exhibits 1 through 4 were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time CNA through January 10, 2005 when she was discharged. On January 7, 2005, claimant called in and said she would be unable to report for work due to a

lack of transportation. Claimant had been warned about attendance on October 20, 2004 after a series of absences related to personal and family illness and emergency. She had also been absent on February 3, 2004 because of transportation problems.

Claimant was absent due to illness on March 24, May 5, and August 13, 2004. On October 8, 2004, claimant was called away from work because of a family emergency (her son was removed so she was required to appear in court with him). On October 20, claimant called Cindy Werling at 11:20 a.m. to report her absence after her son was released from the hospital.

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).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The reported absences related to illness are all 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. Claimant's failure to call until mid-shift on October 20 was excused because of the emergency nature of the absence. A failure to report to work because of a lack of transportation is generally considered an unexcused absence. However two unexcused absences spaced nearly a year apart when all other absences were related to illness is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The February 3, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/sc