

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYDEE J HALL
Claimant

APPEAL NO. 10A-UI-06804-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BED BATH & BEYOND INC
Employer

**Original Claim: 04/04/10
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

Bed Bath & Beyond, Inc. filed a timely appeal from an unemployment insurance decision dated April 26, 2010, reference 01, that allowed benefits to Kaydee J. Hall. After due notice was issued, a telephone hearing was held June 28, 2010, with Ms. Hall participating. Store Manager Mark Armstrong and District Human Resources Manager Tanya Fallen participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kaydee J. Hall was employed as a sales associate by Bed Bath & Beyond, Inc. from August 31, 2009, until she was discharged March 16, 2010. Ms. Hall was scheduled to work on March 16, 2010, beginning at 8:00 a.m. She did not report to work and did not contact the employer until approximately 10:30 a.m. She reported that her car had broken down. She had also been tardy on February 4, and February 15, 2010. She had not contacted the employer in advance on either occasion. She had also received a written warning on February 17, 2010.

Ms. Hall had also been absent or tardy on prior occasions and had received verbal warnings. She has received unemployment insurance benefits since filing a claim effective April 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). Although absence due to issues such as personal illness are potentially excusable, absence due to matters of personal responsibility, such as dependable transportation and prompt appearance for scheduled work shifts, are considered unexcused. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984).

The evidence in this record establishes three unexcused absences between February 4, and March 16, 2010. This is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated April 26, 2010, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw