

**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**

**TRACI WEAVER
1022 N ADAMS
MASON CITY IA 50401**

**I C SYSTEM INC
444 E HWY 96
PO BOX 64444
ST PAUL MN 55164**

**Appeal Number: 04A-UI-05568-ET
OC 04-18-04 R 02
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 May 13, 2004, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 9, 2004. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing. The administrative law judge takes official notice of the claimant's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time collection representative for I C System from

September 8, 2003 to April 19, 2004. The claimant was arrested for driving with a suspended license April 14, 2004. She called her mother and step-father, who is a supervisor for the employer, and he indicated he would notify the employer of her absence April 15, 2004. The claimant was not scheduled to work April 16, 2004, but was scheduled to work the morning of April 17, 2004. She was still in jail at that time and her step-father told the employer she would not be in. The claimant was released from jail the afternoon of April 17, 2004, and reported for work April 19, 2004, and the employer terminated her employment. The claimant had received warnings for her attendance October 20, 2003, January 26, 2004 and March 16, 2004, and was aware her job was in jeopardy but testified she believed the March 16, 2004, warning effectively expired after 30 days. The warning stated the claimant would lose her flextime privileges for 30 days and continued absences and tardiness would lead to further disciplinary action up to and including termination.

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(1)a, (7) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 claimant was absent April 15 and 17, 2004, because she was in jail. Although she asked her step-father to notify the employer of her absences, the fact remains her absences those days cannot be considered excused regardless of whether they were reported to the employer because she was incarcerated due to her own actions and was responsible for the consequences. While the claimant may not have been under an attendance warning at the time of her April 17, 2004 absence, she was still under the warning at the time of her April 15, 2004 absence and, although the March 16, 2004 warning stated the claimant could not use flextime for the next 30 days, it did not say the warning expired in 30 days, but that further incidents would lead to further disciplinary action up to and including termination. Consequently, the administrative law judge concludes the final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The May 13, 2004, reference 04, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

je/b