

**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**

**KELLY A DIISCHER
149 – 510TH ST
AURELIA IA 51005**

**GINGERBREAD HOUSE CHILD
DEVELOPMENT CENTER INC
PO BOX 161
STORM LAKE IA 50588-0161**

**Appeal Number: 05A-UI-06805-LT
OC: 06-05-05 R: 01
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) – Absenteeism

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 22, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 19, 2005. Claimant did participate. Employer did participate through Diane Adams and Mark Shea.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time teacher's aide from August 2003 through May 24, 2005, when she was discharged. Her last day worked was May 19 and she had been granted time off on May 20. She called in sick on May 23, and her husband called and attempted to leave a message for Danielle, which she apparently did not receive and considered claimant a

no-call/no-show on May 24. They spoke later in the afternoon and claimant told Danielle she was still ill. The employer's policy provides for involuntary separation upon the first instance of a no-call/no-show absence. On April 27, claimant had given a two-week notice of intention to resign her job, which would have put her last day on May 11. There is no information as to why she was allowed to work beyond the scheduled departure date. Claimant's poor attendance had been addressed during a performance evaluation the previous calendar year.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

Reported absences related to illness are 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, nor does employer's policy of one no-call/no-show resulting in a voluntary termination override 871 IAC 24.25(4), which requires three consecutive work days as a no-call/no-show before a voluntary termination is assigned. A failure to report to work without notification to the employer is generally considered an unexcused absence; however, claimant had a good faith belief that her absence was properly reported on May 24. Thus, in spite of her

past troubles with attendance, there was no final or current act of misconduct and benefits are allowed.

DECISION:

The June 22, 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/kjw