

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA A ALLISON
Claimant

APPEAL NO: 06A-UI-08466-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07-23-06 R: 03
Claimant: Appellant (1)

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 August 14, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 28, 2006. The claimant did participate. The employer did participate through Gary McClure, Store Director; Jean Rossman, Kitchen Manager; and Sarah Lloyd, Human Resources Coordinator. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a salad bar clerk full time beginning September 27, 1995 through July 19, 2006, when she was discharged. The claimant was discharged from employment due to a final incident of absenteeism that occurred on July 16, 2006. The claimant arrived for work at 6:13 a.m., or thirteen minutes late. The claimant was last warned on June 26, 2006, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on June 24, April 23, and January 22, in addition to other non-documented days.

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 claimant has never presented any doctor's note that indicated that she was allowed to be late to work. The claimant's being the mother of a nine-year-old child is not an excuse for being late to work. The claimant was never told that if she called in sick, she would be discharged. The claimant was late to work and then alleged that she was sick. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 14, 2006, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw