

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN A MCMANUS
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO: 10A-UI-07723-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 21, 2010, reference 06, that held she was discharged for excessive unexcused absenteeism and tardiness on November 13, 2009, and benefits are denied. A telephone hearing was held on July 15, 2010. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant worker for the employer-temporary firm on and off for about five years. The claimant began working her last assignment in September 2009 at Legacy Manufacturing. The claimant was a full-time worker in the warehouse and drove a forklift. The claimant last worked the assignment about a week before Thanksgiving Day in November 2009.

During the latter period of claimant's employment, she requested time-off due to some government program work that was being done on her house. A representative at Legacy advised the claimant it was letting her go due to missing too much work. The claimant did consult with employer representatives about the end of the Legacy assignment, but it had no further work to offer her.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for excessive unexcused absences or tardiness on or about November 13, 2009. The employer failed to participate in this hearing and present evidence the claimant's attendance issues was for inexcusable conduct.

DECISION:

The department decision dated May 21, 2010, reference 06, is reversed. The claimant was not discharged for misconduct on November 13, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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