

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATRINA MEAD
Claimant

APPEAL NO. 08A-UI-04357-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

**OC: 04-06-08 R: 02
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 April 28, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 20, 2008. The claimant participated in the hearing. Linda Burns, Employee Relations Specialist; Brandon Leek, Senior Manager; Paula Slagle, Customer Service Manager; and Rico Kelly, Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 customer service representative for CDS Global from September 10, 2007 to April 8, 2008. She was discharged for exceeding the allowed attendance occurrences. Employees receive a verbal warning after accumulating four occurrences within a rolling six-month period; a first written warning after accumulating five occurrences within a rolling six-month period; a second written warning after accumulating six occurrences within a rolling six-month period; and are terminated upon reaching seven occurrences within a rolling six-month period. The claimant was absent due to her own or family illness September 21, 2007, and received ½ occurrence; October 4, 2007, and received one occurrence; October 11 and 12 and received one occurrence; October 27, 2007, and received ½ occurrence; and November 11, 2007, and received one occurrence. On November 15, 2007, the employer issued a documented verbal warning to the claimant regarding her attendance. On November 29, 2007, she received a documented verbal warning for sign-on occurrences after she returned from her break late. On December 10, 2007, she received a documented verbal warning for excessive tardiness after she was tardy September 17; September 20, October 8; December 3; December 6; and December 7, 2007. The claimant had an unexcused absence November 16, 2007, and received one occurrence. She was a no-call/no-show December 29, 2007, and January 4, 2008; and was absent due to

illness January 8, 2008. On January 15, 2008, she received a first written warning for excessive absenteeism and improperly reported absences; seven sign-on violations; and seven incidents of tardiness including January 12, 2008. On February 11, 2008, she received a final written warning for excessive absenteeism after she was absent February 1 and February 8, 2008, due to illness and February 9, 2008, because she did not have transportation. On March 22, 2008, she was absent. Neither party recalls the reason for that absence. On March 24, 2008, the employer verbally told the claimant her job was in jeopardy. On April 5, 2008, the claimant brought her three-year-old daughter to work and said she could not find a babysitter. The employer told her she could not have her daughter there and the claimant left and returned alone at 11:00 a.m. Her mother usually watched her child but the claimant could not reach her that day and consequently she left again at 2:55 p.m. to find her mother and returned at 4:29 p.m. She was suspended pending further investigation April 7, 2008, and her employment was terminated April 8, 2008, for exceeding the allowed number of attendance occurrences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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). While the claimant was absent 12 times due to her own or family illness, she was also absent once due to car problems and once due to a lack of childcare and leaving to look for her mother. She was also tardy seven times and had seven sign-on violations during the seven months of her employment. 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 final absence, in combination with the claimant's history of absenteeism, tardiness and sign on violations is considered excessive. Benefits are denied.

DECISION:

The April 28, 2008, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css