

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA M REICHENBACH**  
Claimant

**APPEAL NO. 12A-UI-05797-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIPH RESTAURANTS LLC**  
Employer

**OC: 04-08-12**  
**Claimant: Appellant (1)**

Iowa Code §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 7, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 12, 2012. The claimant did participate. The employer did participate through Dennis Sailors, General Manager.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an order taker in the call center for pizza delivery full time beginning January 21, 2007 through April 13, 2012 when she was discharged. On April 11, 2012 the claimant called and said she was going to be late to work. She then never showed up for work nor did she call back to indicate that she would not be coming into work. The claimant was last warned on February 3, 2012 that she faced termination from employment if she had any future rule violations, including attendance violations. She was warned at that time for leaving her shift early and for using profanity. On August 5, 2011 the claimant was warned about her attitude. On August 7, 2011 she was warned about being late to open up the call center resulting in two hours of lost sales because there was no employee present to answer telephone calls. All five of the pizza hut stores lost sales because the claimant did not show up on time to work to open up the call center. On February 3, 2012 the claimant was moved from the day shift to the night shift because she was so consistently tardy.

**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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The May 7, 2012 (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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs