

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAKOTA R WHITEAKER**  
Claimant

**APPEAL NO. 11A-UI-07704-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 05/01/11  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 7, 2011 (reference 04) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 7, 2011. Claimant participated. Employer participated through operations manager Corey Nemmers and was represented by Rob Kincaid of Talx.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a telephone sales representative and was separated from employment on May 3, 2011. Her last absence occurred on April 23 when she was tardy due to oversleeping after a vacation. She worked as scheduled for ten calendar days until the termination date without notice of the impending termination investigation. The employer issued a final written warning on April 6, 2011, a verbal warning on March 15 and a written warning on March 21, 2011. On March 9 she left early with permission from a supervisor because of personal family issues; on March 14 she reported illness; on March 19 she left early with supervisory permission but does not recall the reason, and on April 5 she was tardy but cannot recall the reason therefor. Employer has a no fault point attendance policy.

**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 § 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). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

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 absences on March 9 and 19 when she left early with permission from a supervisor are considered excused as the employer has not met its burden of proof to establish any unexcused reason for the absence. The absence on March 14 due to reported illness is also considered excused. Claimant's April 5 tardiness is unexcused as is the final incident of tardiness on April 23. The employer's delay in termination of ten calendar days after the final absence reasonably made the incident for the termination a current act of misconduct. Since claimant had a prior instance of tardiness less than three weeks before her final tardiness and had been warned about that attendance issue the day after on April 6, two unexcused instances of tardiness within a three-week period after having been warned is considered excessive. Benefits are denied.

**DECISION:**

The June 7, 2011 (reference 04) 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs