

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JULIE A RIPPERTON  
359 WILLOWWINDS PL  
IOWA CITY IA 52240**

**DOLGENCORP INC  
DOLLAR GENERAL  
C/O COMP TAX MGR  
PO BOX 34150  
LOUISVILLE KY 40232**

**Appeal Number: 05A-UI-08774-H2T  
OC: 07-31-05 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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 19, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2005. The claimant did participate. The employer did participate through Jane Steirert, District Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a clerk part time beginning January 14, 2005 through July 31, 2005 when she was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on July 25, 2005, when the claimant was 45 minutes late to work. The claimant was last warned on June 30, 2005, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences and or incidents of tardiness occurred on June 4 (tardy 15 minutes), June 6 (tardy 15 minutes), June 8, (tardy 15 minutes), June 9 (no-call/no-show), June 15 (tardy 15 minutes), June 16 (tardy 1 hour and 15 minutes), June 17 (tardy 15 minutes), June 20 (unable to obtain child care), June 21 (tardy 15 minutes), June 22 (tardy 15 minutes), June 24 (tardy 45 minutes), June 26 (unable to obtain child care), June 29 (only worked partial shift due to no child care), and June 30 (tardy 45 minutes).

The claimant's schedule was posted and she had an obligation to check it to insure she was at work when scheduled.

#### 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 final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 19, 2005, 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.

tkh/tjc