

**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**

**CARLA R KLOBNAK  
204 E 5<sup>TH</sup> #1  
INDIANOLA IA 50125**

**ADECCO USA INC  
c/o TALX UC EXPRESS  
PO BOX 66736  
ST LOUIS MO 63166-6736**

**Appeal Number: 04A-UI-03521-AT  
OC: 02-15-04 R: 02  
Claimant: Respondent (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, 4<sup>th</sup> 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 96.5-2a - Discharge

STATEMENT OF THE CASE:

Adecco USA filed a timely appeal from an unemployment insurance decision dated March 17, 2004, reference 06, which allowed benefits to Carla R. Klobnak. After due notice was issued, a telephone hearing was held April 20, 2004 with Ms. Klobnak participating. Office Supervisor Mary Gaffney testified for the employer which was represented by Susan Zevin of TALX UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Carla R. Klobnak worked on assignment for Adecco

USA at Marsh from November 17, 2003 until December 31, 2003. Ms. Klobnak missed work frequently during her assignment, primarily for medical reasons, including surgery. She was tardy on one occasion without prior contact and she was unable to work on December 31, 2003 because of transportation problems. She left work early on December 30, but had permission from her supervisor. All other missed work was due to medical reasons which were properly reported to the employer.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for misconduct in connection with her work. It does not.

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.

The employer has the burden of proof. See Iowa Code Section 96.6-2. In its appeal letter, the employer asserted that benefits should be denied because Ms. Klobnak was discharged because of "excessive absenteeism and tardiness." The employer's theory and its evidence do not take into account the concept of excessive unexcused absenteeism developed through a series of supreme court decisions in this state. See for example Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). Absence due to medical reasons properly reported to the employer cannot be held against a claimant for unemployment insurance purposes. The evidence in this record establishes at most two unexcused absences, the tardiness on November 18, 2003 and the absence due to transportation problems on December 31, 2003. In the light of the numerous absences for medical reasons and the absence of any evidence of warnings, the administrative law judge concludes that the evidence does not establish excessive unexcused absenteeism. Benefits are allowed.

#### DECISION:

The unemployment insurance decision dated March 17, 2004, reference 06, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

tjc/b