

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

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SLATER IA 50244

ADECCO USA INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07972-LT  
OC: 06-20-04 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, 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) – Absenteeism

STATEMENT OF THE CASE:

Employer filed a timely appeal from the July 13, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 13, 2004. Claimant did participate. Employer did participate through Deanna Dunn and was represented by Barb Hamilton of Talx UC Express.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time temporary pricing analyst at Wells Fargo from April 5, 2004 through June 21, 2004 when she was discharged. On June 18, claimant did not return to work or call employer after her child's doctor appointment at 8:00 a.m. before her 10:30 a.m. shift

because the doctor treated her on an emergency basis for an infected ingrown toenail, told claimant not to return to work that day because of the infection and prescribed pain medication, which made her sleepy. Claimant had a court date over her lunch break on June 21, which ran late because the judge for the traffic hearing scheduled at 1:00 p.m. was late and did not start until nearly 2:00 p.m. She had no other instances of absenteeism or warnings that her job was in jeopardy and had notified the Wells Fargo supervisor, Steve Ferguson, of her planned absences.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 reported absences related to illness are all excused for the purpose of the Iowa Employment Security Act. A failure to report to work without notification to the employer is generally considered an unexcused absence. Claimant's failure to notify employer of her inability to return to work on June 18 because of the side effects of the pain medication was reasonable and excused. While claimant was tardy returning to work on June 21, she was legally obligated to attend the traffic court hearing. These two instances of absenteeism without warning her job was in jeopardy and without a prior history of other unexcused absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The July 13, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc