

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY D GLENN**  
Claimant

**APPEAL NO. 08A-UI-03351-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K MART CORP**  
Employer

**OC: 03/02/08 R: 03  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 28, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 21, 2008. Claimant did not participate. Employer participated through Kelly McFarland. Harold McClurg observed.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and if so, whether she is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part time service desk associate and cashier from October 9, 2006 until March 7, 2008 when she was discharged. On March 5 she contacted McFarland and said she would not work on March 6 as scheduled and asked for a reduction in her work hours. McFarland told her she could reduce her hours but she would have to find a replacement for her the next day because of short notice. Claimant became angry and walked out on her shift 15 minutes later. She was supposed to have worked the 5 to 10 p.m. shift but left at 6:45 p.m. and told the service desk associate, rather than a supervisor, she was leaving and said of the March 6 shift, "I'm going to be sick." She failed to report to work on March 6 or notify employer of her absence. On March 7 she contacted employer Sarah Stipp before her shift and claimed to have arranged for coworker Marcy Long to replace her but Long said claimant did not discuss any such arrangement with her. McFarland had warned her about attendance on January 17, 2008.

The claimant has received unemployment benefits since filing a claim with an effective date of March 2, 2008.

## 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified 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. Claimant's report to employer about having found a replacement was a lie and her statement of intent on March 5 to be sick on March 6 indicates her intent to deceive employer. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The March 28, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. 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. The claimant is overpaid benefits in the amount of \$641.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs