

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

HATIDZA HASIC
4536 DOUGLAS AVE APT 12
DES MOINES IA 50310

HY VEE INC
c/o TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

MARK HEDBERG
ATTORNEY AT LAW
845TH AVE
DES MOINES IA 50309-1398

TALX UC EXPRESS
4100 HUBBELL #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-02660-A
OC: 02/01/04 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hatidza Hasic filed a timely appeal from an unemployment insurance decision dated March 2, 2004, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held on April 14, 2004 with Ms. Hasic participating and being represented by Mark Hedberg, Attorney at Law. Exhibits A through C were admitted into evidence. David Williams of TALX UC eXpress appeared on behalf of Hy-Vee, Inc. Assistant Store Director Kevin Hudachek testified, and Exhibits 1 through 3 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Hatidza Hasic was employed as a night stocker by Hy-Vee, Inc., from June 29, 2000 until she was discharged January 31, 2004. Because of prior absences, Ms. Hasic was advised on January 22, 2004 that she must have a doctor's excuse for each subsequent absence. She was absent on January 28, 2004 for medical reasons. Ms. Hasic was being treated by Patricia Vanderpool, DPM, for foot problems pursuant to a workers' compensation claim. Hy-Vee was paying all of the medical bills, including all costs incident to Ms. Hasic seeing Dr. Vanderpool. Ms. Hasic did not consult with Dr. Vanderpool and returned to work without an excuse at 11:00 p.m. on Thursday, January 29, 2004. Since she did not have a doctor's excuse, the company gave her until 7:00 a.m. on Saturday morning, January 31, 2004 to produce documentation. Ms. Hasic worked Thursday night into Friday morning but did not attempt to see Dr. Vanderpool on Friday.

In addition to the final incident, Ms. Hasic had been absent without contact on October 27, 28, and 31 and on November 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Hasic was discharged for misconduct in connection with her work. It does.

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.

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to a medical condition is considered unexcused only if the individual does not properly report the absence to the employer. See 871 IAC 24.32(7). The evidence in this record establishes that proper reporting included both prior contact and, for the absence on January 28, 2004, adequate medical documentation. Ms. Hasic did not provide that documentation. Therefore, the final incident was an unexcused absence. This absence viewed in the light of four prior absences without contact is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated March 2, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

kjf/b