

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHALA M HOLLOWAY**  
Claimant

**APPEAL NO: 07A-UI-06723-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSTEMS UNLIMITED INC**  
Employer

**OC: 06/10/07 R: 03  
Claimant: Appellant (1)**

Iowa Code § 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 June 26, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 24, 2007. Claimant participated. Employer participated through Carrie Wilken.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**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 full time counselor from January 26, 2006 until June 9, 2007 when she was discharged. She was last absent without notice on June 9 (could not find coverage for her shift due to a lack of child care). On June 7 employer gave her a final written warning for attendance violations. Other absences occurred on June 1, 2007 tardy with warning (ran out of gas on the way to work); June 5, 2007 absent without notice prior to the shift with a “critical warning” (lack of child care), and June 6, 2007 no call-no show and resulting final warning (lack of child care). Prior 90-day cycle absences were on February 27, 2006 warning for missing two training classes on February 11 and 23, 2006 (no recollection of the reason); March 8, 2006 tardiness to a medication class to the extent that the instructor would not let her attend (no recollection as to the reason).

**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 as to 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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The June 26, 2007, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs