

**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**

**TANITIA R PATTERSON
3700 ELM DR #4
URBANDALE IA 52302**

**TACO CASA INC
2506 W EUCLID
DES MOINES IA 50310**

**Appeal Number: 05A-UI-06299-CT
OC: 05/08/05 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 for Misconduct

STATEMENT OF THE CASE:

Tanita Patterson filed an appeal from a representative's decision dated May 24, 2005, reference 01, which denied benefits based on her separation from Taco Casa, Inc. After due notice was issued, a hearing was held by telephone on July 5, 2005. Ms. Patterson participated personally. The employer participated by Kim Buller, Owner, and Shelly Ogden, Manager. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Patterson was employed by Taco Casa, Inc. from

March 15, 1995 until April 26, 2005 as a full-time counter person. She was discharged because of insubordination, customer complaints, and repeated tardiness in reporting for work.

On April 26, Shelly Ogden called Ms. Patterson at home to discuss the fact that certain duties had not been performed during her shift the prior evening. Ms. Patterson was in charge of the shift on that occasion. Ms. Patterson began yelling and asking why another individual was not being called as he was responsible for some of the duties. She was reminded that she was responsible for the shift. Ms. Ogden indicated that, if Ms. Patterson could not make sure tasks were being performed, she would find someone who could. When Ms. Patterson questioned what she meant, Ms. Ogden indicated she was tired of making excuses for her. Ms. Patterson began yelling again. Ms. Ogden indicated she was not going to argue the matter further and Ms. Patterson asked for the owner's telephone number. Ms. Ogden gave her the number and also advised her that the matter had already been discussed with the owner. When Ms. Patterson began yelling again, Ms. Ogden discharged her. Ms. Patterson had been asked during the conversation to refrain from yelling.

On February 25, 2005, Ms. Patterson and Ms. Ogden were both working in the front of the restaurant during lunch when Ms. Ogden asked her what she was doing. Ms. Patterson raised her voice and replied, in the presence of customers, that she knew what she was doing. She was verbally warned not to talk to her manager in that manner in front of customers. On January 5, 2005, Ms. Ogden called Ms. Patterson at the restaurant to get a cash register reading. There was a snow storm and Ms. Ogden wanted to make a decision about closing the restaurant early. Ms. Patterson began yelling and asking why the information was needed and whether they were closing early. She indicated she could not afford to lose hours. She did not give Ms. Ogden the requested information. Ms. Ogden reported the matter to the owner and both went to the restaurant to meet with Ms. Patterson. The owner warned her that Ms. Ogden was her supervisor and that her instructions had to be followed. She was also told that she was not to yell at Ms. Ogden again if she wanted to keep her job. Ms. Patterson indicated she understood.

The employer received several complaints about Ms. Patterson and the condition of the restaurant when she was working. The complaints were not discussed with her and she was not disciplined because of them. Ms. Patterson received a written warning about tardiness on January 28, 2005. She was late at least five times in April of 2005, the last time on April 23. The tardiness of April 23 was due to oversleeping and lack of transportation.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Patterson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Patterson's tardiness alone would be sufficient to establish disqualifying misconduct, as would her insubordination towards her manager. She had been warned in January that her tardiness was jeopardizing her continued employment. In spite of the warning, she continued to report to work late. She was late at least five times during her final month of employment. This number does not include the occasions on which she contended she was allowed to report late because she was picking her child up from school. The evidence does not establish any reasonable cause for the five occasions of tardiness in April and, as such, they are all unexcused. Five occasions of tardiness in one

month is excessive. Excessive unexcused tardiness constitutes a substantial disregard of the standards an employer has the right to expect.

Ms. Patterson had also been warned in January that she was not to yell at her manager. In spite of the warning, she raised her voice to the manager in front of customers on February 25. She again yelled at the manager on the telephone on April 26. If there had been only one incident of such conduct, the administrative law judge would be inclined to view it as a single "hot-headed" incident. However, the conduct continued to occur in spite of a warning that it was not allowed.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated May 24, 2005, reference 01, is hereby affirmed. Ms. Patterson was discharged for disqualifying 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs