

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE M GILLESPIE**

Claimant

**APPEAL NO. 08A-UI-02407-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUNNYBROOK ASSISTED LIVING**

Employer

**OC: 02/10/08 R: 04  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michelle Gillespie filed an appeal from a representative's decision dated March 7, 2008, reference 02, which denied benefits based on her separation from Sunnybrook Assisted Living. After due notice was issued, a hearing was held by telephone on March 26, 2008. Ms. Gillespie participated personally. The employer participated by Peggy Van Amerongen, Administrator, and Barb Black, Healthcare Coordinator.

**ISSUE:**

At issue in this matter is whether Ms. Gillespie was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gillespie was employed by Sunnybrook Assisted Living from August 9, 2005 until January 28, 2008. She was last employed full time performing a variety of duties. She was discharged because of repeated tardiness in reporting to work and because of the failure to administer medications.

Ms. Gillespie received a written warning on December 4, 2007 concerning her attendance. In making the decision to discharge, the employer only considered those occasions on which she was more than one or two minutes late after the warning. She was late on 10 separate occasions after December 4. The tardiness ranged from 5 minutes to 13 minutes and was usually due to oversleeping. The final tardiness occurred on January 22 when Ms. Gillespie was 11 minutes late due to a transportation issue. Ms. Gillespie's supervisor usually arrived at work after Ms. Gillespie was already there. The employer did not learn of the January 22 tardiness until time sheets were received on January 28. Ms. Gillespie was notified of her discharge on January 28.

Ms. Gillespie failed to give noon medications to three residents on January 16 because she was busy. She brought the error to the employer's attention herself. There had been no prior

medication errors. The employer planned to give her a warning regarding her attitude on January 28 but discharged her because of her attendance instead.

**REASONING AND CONCLUSIONS OF LAW:**

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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

The employer did not consider the 10 times Ms. Gillespie was late in November prior to being warned. The discharge was based solely on the 10 occasions she was late after the December 4 warning. She accumulated an additional 10 occasions of tardiness after she was put on notice that her attendance was jeopardizing her continued employment. The evidence does not establish any justification for the repeated tardiness. The administrative law judge considers 10 occasions of unexcused tardiness during a period of approximately two months to be excessive.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Ms. Gillespie was warned about her conduct but failed to take those steps necessary to ensure her timely arrival at work. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

**DECISION:**

The representative's decision dated March 7, 2008, reference 02, is hereby affirmed. Ms. Gillespie was discharged for misconduct in connection with her employment with Sunnybrook Assisted Living. 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.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs