

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KASHANIEK LEE**  
Claimant

**J C PENNEY CORPORATION INC**  
Employer

**APPEAL 18A-UI-12434-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/02/18**  
**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 19, 2018, (reference 01) representative decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 16, 2019. Claimant did not participate. Employer participated through Suzanne Vos, General Manager. Employer's Exhibit 1 was admitted into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a sales associate beginning on July 17, 2018 through December 3, 2018 when she was discharged. The claimant was discharge for poor attendance.

When she was hired the claimant was given a copy of the employer's attendance policy. The policy warns employees that once they reach ten attendance points they will be discharged. The policy also provides that once an employee reaches nine points they will be given a final written warning. The claimant was never given a final written warning that put her on notice that there were changes she needed to make in order to preserve her employment.

Claimant's incidents where she accumulated points are set out in employer's Exhibit 1. Claimant's last verbal warning was on August 27. There after she reached nine points on September 22. She was late another nine times after that. The employer took no action after the claimant reached ten points and never provided the claimant with a final written warning.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The employer did not follow their own policy by providing the claimant with a final written warning when she reached nine attendance points. Thereafter they continued to let the claimant accumulate attendance points without any warning or action on their part until she reached twenty-three attendance points on December 3. Without fair warning the claimant could not know there were changes she needed to make to preserve her employment. The employer has not established repeated misconduct after warnings. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The December 19, 2018, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/rvs