accident, while claimant was still at the scene, lab assistant manager, Anne, called claimant on her cell phone 15 minutes after her shift started, and claimant told her about the car accident. Anne passed along the information to Gene Guy later that day and said claimant would not be at work at all that day.

Claimant had been absent on June 6 due to car problems and was a no-call/no-show on July 2. On June 10 she reported to work with tooth problems and after Mary Woods, sales supervisor, saw claimant's jaw with a lump the size of a golf ball, she gave her permission to leave for treatment. She also missed a half day on June 13 because of complications of the tooth abscess. She was absent on June 18 due to a sunburn and left early on July 27 with permission from Sarah, lead lab technician, related to a child custody issue. Employer had issued a verbal warning on June 22 and a written warning on July 2.

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 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.

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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

The only unexcused absences claimant had were on June 6 for car problems and on July 2 when she failed to report or notify employer of her absence. Reported absences related to

illness (such as her dental problems and sunburn) are 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 and a lead worker or supervisor's permission to leave work early for any reason renders the absence excused. A failure to report to work without notification to the employer is generally considered an unexcused absence, however, her failure to call before the shift on July 28 was excused as she was in an emergency situation and had not had a reasonable amount of time to contact employer about the hit and run accident before Anne called her. She was obligated to stay on the scene to report the incident to law enforcement authorities and her injury (back pain) derived from the accident reasonably prevented her from attending work later in the day. Accordingly, employer has not met its burden of proof to establish a current or final act of misconduct. Benefits are allowed.

DECISION:

The September 22, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjw