

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA A ROBINSON**  
Claimant

**APPEAL NO. 12A-UI-06555-VST**

**LANCE PRIVATE BRANDS LLC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/13/12**  
**Claimant: Appellant(1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated May 31, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 26, 2012. Claimant participated. The employer participated by Karen Taylor, the human resources manager. The record consists of the testimony of Karen Taylor and the testimony of Kristina Robinson.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures cookies and crackers at its facility in Burlington, Iowa. The claimant was hired on September 10, 2009. The claimant's last day of work was May 11, 2012. She was terminated on May 15, 2012, due to attendance problems.

The claimant's attendance record is as follows:

May 15, 2012	Left Early	Gone five hours to change pants.
April 27, 2012	Left Early	Child Care
March 26, 2012	Tardy	
March 17, 2012	Absent	Personal Illness
March 4, 2012	Absent	Personal Reasons
February 9, 2012	Left Early	Child Care
January 16, 2012	Absent	Personal Illness
November 27, 2011	Tardy	

The incident that led to the claimant's termination occurred on May 11, 2012. The claimant had a rip in her pants and the employer sent her home to change her pants. The claimant was gone for five hours and was assessed an attendance point. The employer's policy calls for termination if an employee has six points within six months. The claimant was given a final warning for attendance on January 20, 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The evidence in this case showed excessive unexcused absenteeism. Only two of the claimant's absences were for personal illness. The remaining absences were due to matters of personal responsibility such as child care and transportation problems. When asked why she was late to work, the claimant said it was probably due to car problems. Her final incident was being gone for five hours after she was told to change pants since her pants had a rip. The claimant had no transportation home and then she stayed home to do laundry. The claimant's extended absence on May 11, 2012, was also due to personal responsibility. She had been given a final attendance warning in January 2012, and knew her job was in jeopardy. Since the claimant was discharged for excessive unexcused absenteeism, she was discharged for misconduct. Benefits are denied.

#### **DECISION:**

The decision of the representative dated May 31, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/css