

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLI WESTON**  
Claimant

**APPEAL NO. 08A-UI-07844-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 12-23-08 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 24, 2008. The claimant participated in the hearing. Ronette Powel, OC Manager of Operations, and Alyce Smolsky, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine operator for Wells Dairy from April 4, 2005 to July 10, 2008. The employer uses a no-fault attendance policy, and employees are terminated upon reaching nine occurrences during a rolling 12-month year. If the employee accumulates eight points twice during the rolling calendar year, they are discharged. On August 10, 2007, the claimant was absent a partial day but does not recall the reason and received one point; on August 15, 2007, she was absent a full day but does not recall the reason and received one point; on March 10, 2008, she was absent a full day because her son was ill and received one point; on April 1, 2008, she was absent a full day because she fell down at her son's school and received one point; on April 9, 2008, she was absent a full day but does not recall the reason and received one point; on April 16, 2008, she was absent a partial day but does not recall the reason and received one point; on June 24, 2008, she was absent a full day but does not recall the reason and received one point; on June 28, 2008, she was absent a partial day due to car problems and received one point; and on July 10, 2008, she was 90 minutes late because she overslept when her alarm clock did not go off and received one point. She testified her absences and incidents of tardiness were due to car problems, her children, trains, a speeding ticket, and problems with Mid-American Energy when her electricity would go off for a minute causing her alarm clock to malfunction. The claimant received a verbal warning August 30, 2007; a written warning April 9, 2008; and a final written warning April 24, 2008. The employer terminated her employment July 10, 2008, for excessive unexcused absenteeism.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

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 claimant was discharged after exceeding the allowed number of attendance points. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Consequently, benefits must be denied.

## DECISION:

The August 20, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw