

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNDA JOHNSON**

Claimant

**APPEAL NO: 13A-UI-03209-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOME DEPOT USA INC**

Employer

**OC: 02/17/13**

**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 March 13, 2013, 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 April 18, 2013. The claimant participated in the hearing. James McNamar, Operations Manager, participated in the hearing on behalf of the employer.

**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 part-time cashier for Home Depot USA from March 7, 2012 to January 29, 2013. She was discharged from employment due to three final incidents of absenteeism that occurred January 26, 27 and 28, 2013.

On June 13, 2012, the claimant received a written warning for accumulating four incidents of tardiness and five incidents of absenteeism. She was tardy April 10, 12, 16, May 4 and 12, 2012, and was absent April 26, May 29, June 3, 7 and 12, 2012. The warning stated that further incidents of tardiness or unexcused absenteeism could result in further warnings or possible termination of employment.

The claimant was a no-call/no-show January 26, 27 and 28, 2013, because she lost her transportation and could not find rides to work. Employees are required to report their absences to a manager. The employer does not have a dedicated call in line or an answering machine but there are managers in the store by 4:00 a.m., 5:00 a.m. or 6:00 a.m., depending on which day of the week it is, and before the store opens the phone rings on the overhead speaker and a manager picks it up. There is also always a manager on duty during the hours the store is open. The claimant stated she tried to call Operations Manager James McNamar January 25, 2013, and left a message for him to call her back so she could explain she did not have

transportation but Mr. McNamar does not recall receiving a message from the claimant. She did not call in January 26, 2013, but tried to call before her 7:45 a.m. shift January 27, 2013, although she stated she did not receive an answer and did not leave a message. She did not call in or report for work January 28, 2013, assuming her employment was terminated for three no-call/no-show absences.

### **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 employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final three absences were no-call/no-shows and were not excused. The final absences, in combination with the claimant's history of absenteeism, are considered excessive. Therefore, benefits are denied.

**DECISION:**

The March 13, 2013, reference 01, decision is affirmed. She 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

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