

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANE HEFEL**  
Claimant

**APPEAL NO. 07A-UI-03532-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KOHL'S DEPARTMENT STORES INC**  
Employer

**OC: 03-04-07 R: 04  
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 29, 2007, 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 23, 2007. The claimant participated in the hearing. Troy Marquardt, Store 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 full-time area supervisor for Kohl's Department Stores from August 31, 2004 to February 19, 2007. On February 19, 2007, the claimant had a conflict with the assistant store manager, went to the office, stated she was giving her two-week notice and said she was going home sick. On her way home, Nancy Robertson, Head of Personnel and Operations, called the claimant and told her it was not good for her to effectively walk out and if she returned February 20, 2007, they would have a three-way conversation about the situation. The claimant called Ms. Robertson back and asked if she was fired and Ms. Robertson said "no," come in tomorrow. At 8:00 p.m. Ms. Robertson and the assistant store manager called the claimant and said her employment was terminated because of her attendance and because she left that day without permission. The employer's policy states that 15 occurrence issues in a rolling 12-month period are allowed before termination could occur. On January 15, 2005, the claimant received a written warning for her attendance; on August 23, 2006, she received a final written warning for accumulating nine attendance issues; on February 8, 2007, she received a final written warning for accumulating 19 issues and was told none of her absences would drop off prior to February 22, 2007. The employer told her it would give her one more chance before termination would occur because of her attendance. Ms. Robertson consulted with Troy Marquardt, Store Manager, about the situation and the employer decided to terminate the claimant's employment for attendance because she walked off the job without permission February 19, 2007.

## 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 given one more attendance chance February 8, 2007, but still chose to walk out February 19, 2007, because she was upset about her confrontation with the assistant store manager. That absence gave her 23 attendance occurrences, and it was not unreasonable for the employer to terminate her employment at that time for violating the attendance policy and agreement. While Ms. Robertson should not have misled the claimant into thinking she would not be fired, she had not spoken to the store manager yet and did not wish to make the decision to terminate the claimant's employment on her own. The remaining issue is whether the claimant is entitled to benefits for her two-week notice period. The Iowa Administrative Code states that, "Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation. (871 IAC 24.25(38)). In this case, the employer terminated the claimant's employment because of her attendance, not as a result of her giving her two week notice. If the claimant had not left February 19, 2007, but simply given her resignation and been discharged, she would have been eligible for benefits for the two-week resignation period. Consequently, the administrative law judge concludes the claimant was discharged because she violated the employer's attendance policy after being warned and her last absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

**DECISION:**

The March 29, 2007, 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