

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANITA P MCCLUNG
Claimant

APPEAL NO. 13A-UI-09560-ST

EXPRESS SERVICES INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/21/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated August 13, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism and tardiness on July 12, 2013, and benefits are denied. A hearing was held on September 24, 2013. The claimant participated. Angie Harris, Staffing Consultant, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on August 9, 2012 and started her last worked assignment at Curries on May 22, 2013 as a full-time general labor. The claimant had previously worked an assignment at Crescent Place and she had been released due to insubordination and poor job performance.

The Curries HR department dismissed claimant from her assignment on July 9, and it notified the employer. Curries advised that claimant was late to work on May 31, June 21 and June 24. She was absent from work due to transportation problems on June 4 and July 9. The employer noted claimant had received an attendance warning at Crescent Place. It terminated claimant on July 12 for excessive absences and tardiness.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer established misconduct in the discharge of the claimant on July 12, 2013, for excessive "unexcused" absenteeism.

Missing work due to transportation is a personal matter and is not excusable. Three tardiness and two unexcused absences within seven weeks of work is excessive and constitutes job disqualifying misconduct.

DECISION:

The decision of the representative dated August 13, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on July 12, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs