

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETH A SNELL**  
Claimant

**APPEAL NO. 11A-UI-01728-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 05/09/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 1, 2011 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 11, 2011. Claimant participated with her boyfriend Howard Wyldes and was represented by Robert Wilson, Attorney at Law. Employer participated through human resources manager Roxanne Martinek, bakery manager Shawn Casey, and store director Jamey Franck and was represented by John Fiorelli of Corporate Cost Control, Inc. Employer's Exhibit One was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a bakery cake designer and was separated from employment on November 19, 2010. Franck observed claimant walk in late and checked his watch. She was tardy because her dog pulled the cord from the wall. He had her time clock punches pulled and reviewed and found 16 instances of tardiness by more than one minute in 21 days scheduled and worked after the most recent warning. (Employer's Exhibit 1, page 5) She had been warned in writing about attendance in general and reporting absences on October 22, 2010 after she left three and a half hours early without permission from a manager on October 19, 2010 and left work undone. She left after claiming to have spoken with manager trainee Cindy but did not raise that defense with the employer when presented with the warning. (Employer's Exhibit 1, page 4) If employees were in line to clock in on time but had to wait their turn and that made them tardy, they are expected to report the issue to Martinek so she can adjust their time card. The employer granted leeway of one minute at clock at the 8 a.m. shift start time when the time clock would be most frequently used but not 7 a.m. or 9 a.m. when not many employees clock in at those times.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

## **DECISION:**

The February 1, 2011 (reference 02) 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs