

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TASHIKA N LEWIS

Claimant

APPEAL NO. 11A-UI-01912-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO

Employer

OC: 12-05-10

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 11, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2011. The claimant did participate along with her witness Stacy Walker. The employer did participate through Bridget Clark, Human Resources Manager, Casey Cox, Team Manager and Elisha Birkenholtz, Sales and Service Manager. Employer's Exhibit One was entered and received into the record. Claimant's Exhibits A and B were entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a call center representative full time beginning March 31, 2008 through November 30, 2010 when she was discharged.

The claimant was discharged for failing to report to work on November 28. On November 27 the claimant was working with Ms. Walker. Ms. Walker was trying to find someone to work for her on her mandatory overtime day of November 28. The claimant, not believing she had to work that day agreed to work for Ms. Walker. The two of them filled out the paperwork to make the schedule change and presented it to the manager for approval. The manager told both of them that the claimant could not work for Ms. Walker because it would put her into overtime status. The claimant was never told that she had to work on November 28. The claimant had been sent an e-mail that contained an excel spread sheet showing she was to work on November 28. The claimant did not know how to look at the second page of the excel spread sheet and did not think she had to work. The administrative law judge is convinced that the claimant was scheduled to work on November 28 and none of the employer's management employees changed or altered the schedule. The claimant simply did not know she was to work as she did not know how to properly read the excel spread sheet.

The claimant could have checked the web tool that showed the schedule, but she had checked the excel spread sheet and believed she did not have to work so there was no reason to check the web tool. The manager the claimant and Ms. Walker checked with never told the claimant that she could not work for Ms. Walker because she was already scheduled to work. Evidently the manager did not check the web tool either to see if the claimant had to work on November 28, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The claimant simply did not realize she had to work on November 28, because she did not understand how the second page of the excel spreadsheet worked. Under such circumstances the administrative law judge cannot conclude that her absence was intentional, especially in light of her willingness to work for a coworker on November 28. Under these circumstances the claimant's final absence was not intentional and thus no final incident of intentional misconduct has been established. Benefits are allowed.

DECISION:

The February 11, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs