

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH WOHLT
Claimant

APPEAL NO: 06A-UI-08628-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD DEPARTMENT STORES INC
Employer

**OC: 07-30-06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 18, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 13, 2006. The claimant did participate. The employer did participate through Wendell Moore, Assistant Store Manager. Employer's Exhibit One was received.

ISSUE:

The issue is whether claimant was discharged for work connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full time sales associate beginning September 19, 2005 through May 16, 2006 when she was discharged. The claimant was discharged because of a final absence on May 4, 2006 when she called in absent to work to care for an ill child. The claimant had previous unexcused absences on March 7, 2006, February 23, 2006 and December 12, 2005. The claimant knew that any absence she had due to her own illness or those of her children had to be covered by a doctor's note. The note the claimant subsequently provided to the employer did not cover her absence on May 4, 2006, just May 8, 2006. While the claimant may have been off work to care for an ill child she did not provide the proper documentation to support her absence. The claimant was allowed to work after May 4 because the manager who was responsible for making discharged decisions did not work at the same time the claimant did. Mr. Wendell discovered the claimant's note did not cover May 4 on May 8. The claimant was discharged eight days later.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 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 absence was not excused. The claimant did not properly report her absence because she failed to provide a doctor's note that covered May 4, 2006. Thus, the claimant's absence on May 4 was unexcused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 18, 2006, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$942.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs