

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LIJAH L CORNIC  
3128 OAKLAND DELLS  
BURLINGTON IA 52601

TEMP ASSOCIATES  
1000 N ROOSEVELT AVE  
BURLINGTON IA 52601

Appeal Number: 05A-UI-11176-JTT  
OC: 03/06/05 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Temp Associates filed a timely appeal from the October 28, 2005, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 15, 2005. Claimant Lijah Cornic participated. Office Manager Jan Windsor represented the employer. Exhibits One through Eight were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lijah L. Cornic was employed through Temp Associates temporary employment agency as a full-time laborer from June 24, 2005 until September 28, 2005, when Office Manager Jan Windsor discharged her for excessive absenteeism. Ms. Cornic's only assignment was at C.S.I., where

she worked as an assembler. This was Ms. Cornic's first experience of working for a temporary employment agency.

Temp Associates' written attendance policy appears in an employee handbook. Ms. Cornic signed her acknowledgement of receipt of the handbook on June 23, 2005. The policy required Ms. Cornic to notify Temp Associates and the client business if she needed to be absent. Though the written policy does not specify the time frame in which Ms. Cornic was to notify the temp agency or the client business, Temp Associates expected Ms. Cornic to contact *both* companies within one hour after her scheduled start time and leave a message.

The final absence that triggered the discharge occurred on September 28. On that day, Ms. Cornic was absent due to illness and properly notified both Temp Associates and C.S.I. Temp Associates Office Manager contacted Ms. Cornic on September 28 and left a message for Ms. Cornic to call. Ms. Cornic returned the call. Ms. Windsor advised Ms. Cornic that Ms. Cornic would need to provide a doctor's excuse for the absence or she would not be allowed to return to the assignment at C.S.I. Ms. Cornic advised that she had the stomach flu, lacked insurance, and did not believe her condition warranted a visit to the doctor. Ms. Cornic was not allowed to return to the assignment. C.S.I. had considered Ms. Cornic a good worker.

The absence on September 28 followed an absence on September 27. On that date Ms. Cornic's team leader at C.S.I. noted that Ms. Cornic looked pale. Ms. Cornic advised that she was ill. The team leader indicated that Ms. Cornic should leave for the day. Ms. Cornic advised the team leader that she was on her "last leg" with Temp Associates with regard to attendance and was concerned about the consequences of leaving work. The team leader advised Ms. Cornic that the team leader would speak with the plant manager. The plant manager then spoke with Ms. Cornic and advised that he would "take care of" the absence with Temp Associates. Ms. Cornic then left work for the day. Based on the conversation with the plant manager, Ms. Cornic did not believe she needed to personally contact Temp Associates to advise that she was leaving work because she was ill. C.S.I. did, in fact, contact Temp Associates regarding the illness.

Ms. Cornic received written warnings regarding attendance July 18, July 21, August 14, and September 1.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Cornic was discharged for misconduct in connection with her employment based on excessive unexcused absences. It does not.

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 employer has the burden of proving that the claimant was discharged for misconduct that would disqualify the claimant for unemployment insurance benefits. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Ms. Cornic's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that Ms. Cornic's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Cornic's final absence on September 28 was an excused absence under Iowa law, since it was an absence due to illness and was properly reported to both companies. The evidence establishes that the absence on September 27, 2005, was also for illness properly reported to the employer. Ms. Cornic reasonably relied upon the plant manager's statement that he would contact Temp Associates on Ms. Cornic's behalf with regard to her need to leave work early. Given that the final absence was an excused absence, the evidence in the record fails to establish a "current act" of misconduct that might serve as a basis for disqualifying Ms. Cornic for benefits. See 871 IAC 24.32(8). Accordingly, the administrative law judge need not consider whether Ms. Cornic's prior absences were unexcused or whether the prior unexcused absences were excessive. See 871 IAC 24.32(8).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Cornic was discharged for no disqualifying reason. Accordingly, Ms. Cornic is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Cornic.

DECISION:

The representative's decision dated October 28, 2005, reference 03, is affirmed. The claimant was discharged from her employment for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

jt/kjw