

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAUREL L GOODRICH**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 13A-UI-10037-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated August 23, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on August 2, 2013, and benefits are denied. A hearing was held on October 1, 2013. The claimant provided a telephone to participate in the hearing, but could not be reached when called for the hearing at the telephone number provided. Karla Heffron, Assistant VP, Natalie McGee, and Pamela Kiel, Representative, participated for the employer. Employer Exhibit 1 was received as evidence.

**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 worked as a full-time order selector from August 29, 2008 to August 2, 2013. The claimant received the employer attendance policy that provides for progressive discipline. An employee that incurs nine attendance points within a nine-month rolling period is subject to termination.

The employer issued claimant progressive discipline for attendance beginning with a verbal warning on April 28, 2013, written warning on May 21, and a written warning with suspension on June 4. Claimant knew that a further attendance issue could result in termination.

Claimant called in an absence due to illness on August 1. When questioned about a doctor excuse the following day, claimant admitted she missed work to help a friend. This unexcused absence caused claimant to reach nine and one-half attendance points and she was terminated.

Claimant was not available when called at the telephone she provided to be called for the hearing.

**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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 August 2, 2013, for excessive "unexcused" absenteeism.

Claimant received progressive discipline with three warnings to let her know she was at the threshold for termination due to attendance problems. The final unexcused absence put her over the limit and she was discharged for job disqualifying misconduct.

**DECISION:**

The decision of the representative dated August 23, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 2, 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.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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