

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI A SOMMER
Claimant

APPEAL NO. 110-UI-14039-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD
Employer

**OC: 05/22/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Terri A. Sommer filed a timely appeal from an unemployment insurance decision dated June 20, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held July 28, 2011. Administrative Law Judge decision 11A-UI-08365-M2 issued on July 29, 2011 affirmed the disqualification. The claimant filed an appeal with the Employment Appeal Board. In an order dated October 25, 2011, the Board remanded the case for further proceedings. After prehearing discovery, an evidentiary hearing was held March 2, 2012 in Des Moines, Iowa. Ms. Sommer participated on her own behalf. Quality Management Director Clint Reynolds testified for the employer, Iowa Department of Human Services, Woodward Resource Center, which was represented by David Williams of TALX uc eXpress. The record in this case includes the transcript of the July 2011 hearing, Exhibits One and Two which were admitted into the record at that time, Employer Exhibits Three, Four and Five and Claimant Exhibit A, all of which were admitted into the record on March 2, 2012 and the testimony from the March 2, 2012 hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Terri A. Sommer was employed by Iowa Department of Human Services, Woodward Resource Center from March 1, 1999 until she was discharged May 27, 2011. The final incident leading to the discharge occurred on May 4, 2011 when Ms. Sommer was two minutes late. Quality Management Director Clint Reynolds did not learn of this until after the end of the pay period when he received the time cards on May 16, 2011. Ms. Sommer was absent due to illness on May 16, 2011. On May 20, 2011, Mr. Reynolds advised Ms. Sommer that he was convening a review committee to determine if she should be discharged because of her tardiness on May 4 and 22 prior instances of tardiness dating back to June 25, 2010. The discharge was finalized on May 27, 2011.

Prior to the discharge, Ms. Sommer had received prior discipline because of her attendance. Ms. Sommer had union representation at the disciplinary meetings. She did not file grievances. In reaching the decision to discharge, the employer considered only instances of tardiness in which Ms. Sommer had not given prior notification that she would be late. At least some of the instances of tardiness through October 2010 were the result of Ms. Sommer providing care to her invalid mother who lived with her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Excessive, unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters beyond an individual's control, such as illness, are considered excused, provided the individual properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7).

The evidence in the record establishes 23 instances of tardiness in less than 11 months. This is sufficient to establish excessive, unexcused absenteeism.

The claimant asserted that other individuals were allowed to be tardy without prior notification. The employer's sworn testimony and documentary evidence does not support that contention. The evidence establishes that tardiness could have been excused if Ms. Sommer had notified the employer at least 15 minutes in advance of her shift. The evidence establishes that Ms. Sommer did not notify the employer in advance on the occasions that led to her discharge. Having reviewed all of the evidence in this record, the administrative law judge concludes that benefits must be withheld.

DECISION:

The unemployment insurance decision dated June 20, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs