

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAYLA R OWENS**

Claimant

**APPEAL NO. 11A-UI-09999-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEMROW FAMILY VISION PC**

Employer

**OC: 06/26/11**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Kayla R. Owens filed a timely appeal from an unemployment insurance decision dated July 19, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on August 30, 2011 with Kristie Semrow and Darren Semrow participating for the employer, Semrow Family Vision, PC. Employer Exhibit One was admitted into evidence. The claimant did not respond when paged at the time of the hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Kayla R. Owens was employed by Semrow Family Vision, PC from March 1, 2010 until she was discharged June 23, 2011. She last worked as an optician. Ms. Owens had been absent for a personal legal matter on June 20 and June 21, 2011. She told owner Kristie Semrow that she would return to work on June 22. She was tardy on that date. Ms. Semrow sent Ms. Owens home with instructions to call the business later in the day. Ms. Owens did not do so. She was also absent on June 23, 2011. Ms. Semrow called Ms. Owens and found that the absence was because of a continuation of the personal legal problems. Ms. Semrow then discharged Ms. Owens.

Ms. Owens had been tardy on four prior occasions and had received a warning because of her attendance on February 21, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

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 for matters such as personal illness may be excused for unemployment insurance purposes, but only if the individual properly reports the absence to the employer. See 871 IAC 24.32(7).

The evidence establishes that Ms. Owens was discharged because of excessive tardiness and absences caused by her personal legal problems. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated July 19, 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.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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