

**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**

**LISA M DAVEY
911 – 41ST ST
DES MOINES IA 50312 2611**

**SHERATON & BENNIGAN'S DM
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**MICHAEL M SELLERS
ATTORNEY AT LAW
SELLERS LAW OFFICE
ONE CORPORATE PL
1501 – 42ND ST STE 380
WEST DES MOINES IA 50266-1005**

**Appeal Number: 05A-UI-11931-H2
OC: 11-06-05 R: 02
Claimant: Appellant (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on December 21, 2005. The claimant did participate along with her father, John Davey. The employer did participate through Toby May, General Manager, Troy Thompson, Director of Sales and was represented by Michael M. Sellers, Attorney at Law. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales Manager full time beginning April 16, 2003 through October 14, 2005 when she was discharged. The claimant was discharged from employment due to a final incident of absenteeism that occurred on October 14, 2005 when she was 15 minutes late to work. The claimant was late to work because she was trying to get her dog back in the house. The claimant was last warned on August 5, 2005, that she faced termination from employment upon another incident of unexcused absenteeism. The warning notice specifically put claimant on notice that any deviation from her schedule would result in her termination. At hearing, the claimant admitted that she had been tardy to work numerous times and had been verbally warned by her supervisor that her attendance had to improve. The claimant's tardiness and attendance had been an issue with her performance evaluation in January 2005 and she was put on notice that being tardy to work was unacceptable.

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 claimant was warned that the employer was no longer going to tolerate her performance and conduct, that is, her late arrival to work. The claimant received fair warning that there were changes she needed to make in order to preserve her employment.

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 final

absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 21, 2005, reference 02, decision is affirmed. 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.

tkh/pjs