

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

LORY G KUON
926 OAKRIDGE APT 26
B-126
DES MOINES IA 50314

BURKE MARKETING CORPORATION
PO BOX 209
NEVADA IA 50201

Appeal Number: 05A-UI-01345-AT
OC: 12-26-04 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
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Lory G. Kuon filed an appeal from an unemployment insurance decision dated January 20, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held February 23, 2005 with Ms. Kuon participating. Human Resources Generalist Melissa Asr participated for the employer, Burke Marketing Corporation. Daniel Lock served as interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lory G. Kuon was employed by Burke Marketing Corporation from December 8, 2003 until she was discharged December 20, 2004. She last worked as a pack room laborer. Ms. Kuon was tardy reporting for work on December 15, 2004. She did not notify the employer in advance that she would be late. She had also been late on December 14, 2004, having first called the employer to say that she was going to the emergency room of a local hospital. No attendance points were given for December 14. Ms. Kuon was also tardy for non-medical reasons on April 12, May 7, July 20, and July 27, 2004. She was absent on June 1, June 16 and June 30, 2004 because her car had broken down. She was absent on August 2, 2004 because she did not have anyone to care for her children.

A fact-finding decision denying benefits to Ms. Kuon was issued on January 20, 2005. Ms. Kuon did not receive the decision. She learned of its existence when she went to her local Workforce Development Center on February 4, 2005. She filed an appeal at that time.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The administrative law judge concludes that it can be. The evidence establishes that Ms. Kuon did not receive the adverse decision in time to file an appeal by January 30, 2005. She acted reasonably by filing an appeal immediately upon learning of its existence. See Eves v. Iowa Employment Security Commission, 211 N.W.2d 324 (Iowa 1973). The remaining question is whether the separation was an event which disqualifies Ms. Kuon for benefits. It was.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's

duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility such as transportation are considered unexcused. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). Absence due to illness is excused for unemployment insurance purposes only if the individual properly reports the absence to the employer. See 871 IAC 24.32(7).

The administrative law judge views the final incident as unexcused. Whether or not Ms. Kuon was still ill on December 15, 2004, she did not notify her employer. The evidence establishes four other instances of tardiness and four unexcused absences prior to the final incident. This is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated January 20, 2005, 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.

tjc/tjc