

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KASONDRA HOLLOWAY**  
Claimant

**APPEAL NO: 13A-UI-03044-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FERGUSON ENTERPRISES INC**  
Employer

**OC: 10-09-11  
Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 5, 2013, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 14, 2013. The claimant responded to the hearing notice but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Debra Damge, Human Resources Administrator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time order picker operator for Ferguson Enterprises from October 1, 2012 to January 16, 2013. Employees are on probation for their first 90 days or until the employer conducts the 90-day review, which can occur after the 90-day period has expired due to holidays and workload. The claimant was discharged for excessive, unexcused absenteeism.

The claimant reported for training 14 minutes late October 8, 2012; she called the employer and reported she was ill and would not be in November 20, 2012; she called and reported she was experiencing family issues and would not be in January 8, 2013; she called three hours and 16 minutes past the scheduled start time of her shift to say she was “sleepy” and was considered a no-call no-show January 11, 2013; she was a no-call no-show January 14, 2013; she called and reported she was experiencing a personal situation and would not be in January 15, 2013; and called to report she would not be in without providing a reason January 16, 2013, and her employment was terminated. The claimant should have received a final written warning for her no-call no-show January 8, 2013, but was never at work again to receive that warning.

The employer recruited the claimant from a University of Northern Iowa career fair and the claimant stated she was still attending some classes. The employer suggested she start out part-time because it could not accommodate any changes in her schedule but the claimant insisted on full-time work even after the employer explained her hours would be 11:00 p.m. to 7:30 a.m. and she would sometimes be required to work overtime up to 9:30 a.m.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 accumulated five absences between January 8 and January 16, 2013, without any of those absences being attributable to illness. Additionally she failed to properly report two of her five absences during that eight-day period. While the claimant's school schedule may have changed, the employer informed her at the time of hire it could not change her hours to accommodate her school schedule and even suggested she accept a part-time position that was more flexible while she was still in school but the claimant was adamant about working full-time. The employer has established that the claimant's final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The March 5, 2013, reference 05, decision is reversed. The claimant was discharged from employment due to job-related misconduct. 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs