

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA MCGEE**  
Claimant

**APPEAL NO: 09A-UI-08696-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSTEMS UNLIMITED INC**  
Employer

**OC: 05-03-09**  
**Claimant: Appellant (1)**

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 June 12, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2009. The claimant participated in the hearing. Mona Bowiat, Assistant Director of Support Services and Molly Parizek, Senior Counselor, 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 part-time counselor for Systems Unlimited from December 10, 2008 to May 8, 2009. She was discharged from employment due to a final incident of absenteeism that occurred May 8, 2009. The claimant received an awareness warning and a critical warning about her attendance before receiving a final written warning at 10:00 a.m. May 8, 2009. The final written warning was effectively a last-chance agreement and stated the claimant could not have another unapproved absence or incident of tardiness during the next 90 days. During the meeting the claimant verbally notified the employer she was giving her two-week notice because she was moving. The claimant was scheduled to work at 4:00 p.m. that day but did not call or show up for work May 8, 9 or 10, 2009. She testified she had a sick child and then a flat tire on her way to work May 8, 2009, and would have been five to ten minutes late but did not call the employer to see if it could be counted as an approved incident of tardiness. She assumed her employment would be terminated so she did not call the employer or show up for work again.

**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 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 placed on a final written warning stating she could not have another unapproved absence or incident of tardiness during the next 90 days the morning of May 8, 2009, and was a no-call/no-show that afternoon. While the claimant assumed her employment would be terminated she did not call the employer to say she would be five to ten minutes late because of a flat tire and to ask if that would be an approved incident of tardiness. If she had done so, the employer might have considered her absence approved and she would not have been in violation of the final written warning. Instead she was a no-call/no-show leaving the employer little choice but to terminate 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. Therefore, benefits are withheld.

**DECISION:**

The June 12, 2009, reference 04, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css