

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONI S PADILLA**  
Claimant

**APPEAL NO: 100-UI-00323-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYNOVATE INC**  
Employer

**OC: 09/06/09**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's September 28, 2009 decision (reference 01) that held the claimant qualified to receive benefits and held the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was initially held on November 6, 2009, before another administrative law judge. Both parties appeared at the hearing. Based on the evidence presented during the hearing, the administrative law judge issued a decision that same day, November 6, reversing the initial decision and held the claimant disqualified from receiving benefits. The claimant appealed the November 6, 2009 decision to the Employment Appeal Board on December 1, 2009, or after the November 22, 2009 deadline to appeal the November 6, 2009 decision.

The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because the file folder containing the hearing notice, the employer's appeal and September 28 representative's decision were not found. The November 6 audio record of the hearing was available.

After hearing notice was again sent to the parties, another telephone hearing was scheduled on February 16, 2010. Prior to the hearing, the employer notified the Appeals Section that the employer did not plan to participate at the February 16 hearing. The claimant did not respond to the hearing notice or participate in the second hearing. (The hearing notice was sent to the claimant's address of record.)

Based on the testimony presented by both parties during the November 6, 2009 hearing for appeal 09A-UI-15045-S2T, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant on September 8, 2008, to work as a part-time interviewer. She received a copy of the employer's handbook with the employer's attendance policy in it on September 8, 2008. On December 15, 2008, the claimant received the employer's updated attendance policy.

The employer gave the claimant a verbal warning on January 2, 2009, for five absences she had as a result of transportation issues or taking care of her eight-year-old daughter. On March 26, 2009, the employer issued the claimant another verbal warning for 11 absences she again had from taking care of her daughter or for transportation issues. One of these absences occurred when the claimant failed to notify the employer or report for work as scheduled. On March 28, 2009, the employer issued the claimant two performance improvement plans. One improvement plan was for failing to properly notify the employer when she was unable to work as scheduled. The other was for unprofessional conduct on the telephone. The employer warned the claimant that further infractions could result in her termination.

On April 23, 2009, the employer issued the claimant a written warning for two absences she had since March 28, 2009. On May 1, 2009, the employer gave the claimant a final written warning for leaving work early. On August 28, 2009, the claimant reported she would not be at work as scheduled on August 28 and 29, 2009. The claimant's parents were visiting and she wanted to spend time with them. The employee who answered the phone told the claimant that she had to call in on August 29, if she did not report to work. The claimant did not call or report to work on August 29, 2009. As a result of the claimant's repeated failure to work as scheduled, the employer discharged her on September 2, 2009.

The claimant established a claim for benefits during the week of September 6, 2009. She has filed for and received benefits since September 6.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. 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).

An employer is entitled to expect employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer established that the claimant was warned that further unexcused absences could result in termination of employment and that her final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 6, 2009, the claimant is disqualified from receiving benefits.

Since the claimant has received benefits since September 6, 2009, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

**DECISION:**

The representative's September 28, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 6, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The issue of whether the claimant has been overpaid or is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs