

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATY BROWN**  
Claimant

**APPEAL NO: 06A-UI-11301-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTAFF USA INC**  
Employer

**OC: 10-08-06 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 9, 2006, reference 02, 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 December 11, 2006. The claimant participated in the hearing. Dawn Paris, Placement Consultant, 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 customer service representative last assigned to Westaff USA Inc. from April 24, 2006 to October 9, 2006. She was discharged from employment due to a final incident of absenteeism that occurred on October 9, 2006. On August 8, 2006, the claimant called in and said she would not be at work; on August 10, 2006, she was one-half hour late; on August 24, 2006, she was a no-call no-show; on August 29, 2006, she left early due to illness; on August 30, 2006, she called in sick; on September 6, 2006, she was 15 minutes late; on September 8, 2006, she was a no-call no-show; on September 12, 2006, she was 15 minutes late; on October 2, 2006, she left one-hour and 15 minutes into her shift; on October 4, 2006, she was asked to go home and change her clothes because she was out of dress code. She was supposed to return to work but failed to do so. On October 9, 2006, she was a no-call no-show and the client requested that the claimant be removed from the assignment. Dawn Paris, Placement Consultant, e-mailed the claimant to notify her the assignment ended and then called the claimant to inform her she would need to come in and pick up her check and they would discuss future assignments at that time. The claimant went in to pick up her check October 20, 2006. She turned in her badge and immediately left without speaking to Ms. Paris or any other employees about future assignments. The claimant testified she sent the employer a letter giving her two-weeks' notice four to six weeks prior to the

separation and the employer requested an updated resume but the claimant did not provide one and stayed on because her supervisor asked if she could temporarily stay longer. She did not take any further action to effectuate her resignation prior to the termination date.

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 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). While the claimant may have given a two-week resignation notice, she did not leave after the two-week period and did not submit another notice. Consequently, her resignation notice is moot because it was never acted upon. The claimant was absent seven times and was tardy or left early on at least four other occasions. Although one absence and one leave early were due to illness, the remainder were not and even if the claimant had given her two-weeks' notice four to six weeks before the separation, that does not give her license to be absent whenever she wanted. Consequently, the administrative law judge concludes that the claimant was discharged for disqualifying job misconduct as defined by Iowa law. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to

the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The November 9, 2006, reference 02, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$1,216.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs