

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAINA WALKER**  
Claimant

**APPEAL NO. 07A-UI-07937-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST COPRORATION**  
Employer

**OC: 07-15-07 R: 01**  
**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 August 6, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 4, 2007. The claimant did participate. The employer did participate through Neil Wiedner, Sales Manager and was represented by Terry Newman of Barnett Associates Inc.

**ISSUES:**

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer service and sales associate full time beginning July 11, 2005 through July 16, 2007 when she was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on July 11, 12, 13, 2007 when she called in to take off work due to personal issues dealing with her marriage. The claimant was last warned on May 9, 2007, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on October 16, 2006 and January 11, 12, 2007, February 8, 9, 2007, March 20, 21 and May 3 through May 7. The claimant did have some of her absences removed from her record for FMLA usage. The absences that were counted against her were not covered by FMLA usage. The claimant's last absence was not due to illness or injury but due to the fact that she decided to end her marriage and move out of her home.

The claimant did not ask to use vacation in a timely manner. A request for vacation time is not automatically granted as the employer must meet staffing requirements. The claimant had been warned that her job was in jeopardy due to her attendance and knew how her vacation request should have been presented.

Claimant has received unemployment benefits since filing a claim with an effective date of July 15, 2007.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 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. Benefits are withheld.

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

**DECISION:**

The August 6, 2007, reference 01, 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. Claimant is overpaid benefits in the amount of \$2,228.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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