

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ALAINA K MENDEZ
1727 – 12TH ST
DES MOINES IA 50314**

**IOWA JEWISH SENIOR LIFE CENTER
900 POLK BLVD
DES MOINES IA 50312**

**Appeal Number: 05A-UI-02929-CT
OC: 02/20/05 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Iowa Jewish Senior Life Center filed an appeal from a representative's decision dated March 17, 2005, reference 01, which held that no disqualification would be imposed regarding Alaina Mendez' separation from employment. After due notice was issued, a hearing was held by telephone on April 8, 2005. The employer participated by Bill Sinclair, Director of Dietary, and Quanta Ristori, Assistant Director of Dietary. Ms. Mendez did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Mendez was employed by Iowa Jewish Senior Life Center from December 22, 2003 until February 17, 2005 as a part-time dietary aide working approximately 14 hours each week. She was discharged because of her attendance.

Ms. Mendez was absent without calling in on January 6, 2005. When questioned, she indicated that her car had been low on gas and would not start. She received a verbal warning as a result of the absence. Ms. Mendez was late reporting to work on February 7, 14, 15, and 16. The tardiness ranged from 6 minutes to 16 minutes. Ms. Mendez did not call in advance to say she would be late. She was notified of her discharge on February 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mendez was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness is considered a limited absence from work.

Ms. Mendez was late four times within the two weeks preceding her separation. Three of the tardies were on consecutive days. The evidence of record does not establish any reasonable cause for the repeated tardiness. Therefore, it is considered unexcused. Four occasions of unexcused tardiness within two weeks is excessive. Ms. Mendez knew or should have known from the verbal warning she received in January that unsatisfactory attendance could result in her discharge. The administrative law judge concludes that the employer has satisfied its burden of proving excessive unexcused absenteeism. Accordingly, benefits are denied.

No overpayment results from this reversal of the prior allowance as Ms. Mendez has not been paid benefits on her claim filed effective February 20, 2005.

DECISION:

The representative's decision dated March 17, 2005, reference 01, is hereby reversed. Ms. Mendez was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs