

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHASITY L ARMSTRONG**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 15A-UI-10253-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 4, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2015. Claimant participated. Employer participated through store manager, Robin Ruth. Employer Exhibits One, Three, and Four were admitted into evidence with no objection. Employer Exhibit Two was admitted into evidence over claimant's relevance objection. Employer Exhibit Five was admitted into evidence over claimant's objection that she had not received the exhibit. Claimant was e-mailed Employer Exhibits One through Five twice during the hearing but was unable to open the attachment each time.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant manager from November 6, 2014, and was separated from employment on August 12, 2015, when she was discharged.

The employer has an attendance policy which provides for termination if an employee has three consecutive no-call/no-shows. If an employee cannot make it to work they are supposed to call the employer an hour before their shift.

The final incident occurred when claimant was tardy on August 9, 2015 to her shift. Claimant was tardy because she forgot her store keys at her house. Claimant needed her store keys because she was scheduled to close. Claimant testified she was in the employer's parking lot five minutes before her shift started, but she did not go inside. Claimant left the parking lot and drove home to find her keys. Claimant returned after her shift had already started. Ms. Ruth testified claimant was fifteen minutes late; claimant testified she was seven minutes late. Claimant was discharged for her absenteeism.

Claimant was last warned on July 29, 2015, that she faced termination from employment upon another incident of unexcused absenteeism. The employer told claimant that there was no more room for error. Claimant signed for her written warning on July 31, 2015. The reason for the written warning was that claimant called was absent from work on July 25, 2015 because of transportation issues; claimant did call the employer about this absence. Claimant was also late to work on July 26, 2015 and did not call the employer to let it know she was going to be late. Claimant was approximately thirty minutes late on July 26, 2015. Then on July 27, 28, and 29, 2015, claimant was a no-call/no-show each day. The district manager tried to contact claimant on each day, but was unsuccessful.

## **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. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer’s absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Claimant had been previously warned that any further absences may result in termination. Employer Exhibit Three. This warning related to multiple absences and three no-call/no-shows at the end of July 2015. On August 9, 2015, claimant was at least seven minutes late to work. The employer discharged claimant because she was tardy.

Claimant’s argument that she tried to call the employer to let it know she was going to be late is not persuasive. Claimant testified she was in the employer’s parking lot five minutes prior to the start of her shift. Claimant then discovered she had forgotten her keys to close that evening. Instead of going into the store to establish she was on time, claimant instead drove home. Claimant thought she could get the keys and get back in time. However, claimant did not make it back in time. Claimant testified she was seven minutes late when she arrived back. Ms. Ruth testified that claimant was fifteen minutes late. Either way, claimant was still late to work because she forgot her keys. The employer had told claimant that there was no more room for error when it comes to her absenteeism, but claimant was still tardy on August 9, 2015.

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 unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The September 4, 2015, (reference 01) unemployment insurance decision is affirmed. 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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