

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHEALA G MONTGOMERY**

Claimant

**APPEAL NO. 08A-UI-07424-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMANA NORDSTROM INC**

**SEVEN VILLAGES RESTAURANT**

Employer

**OC: 07-20-08 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 11, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 4, 2008. The claimant did participate. The employer did participate through Potique Johnson, General Manager. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**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 housekeeper part time beginning September 21, 2007 through July 15, 2008 when she was discharged.

The claimant missed work on July 15. The claimant alleges that she called work and reported to the night auditor, Bobbi that she was going to miss work. The employer alleges the claimant was a no call-no show and that even if she did report to Bobbi, she did not properly report her absence as she was required to speak to her direct supervisor, Vel Davidson or to Potique Johnson.

The claimant had previously missed work on June 24 when she called in and left a message that she would be absent. The employer considered her absence unexcused because she did not speak to her supervisor or to Ms. Johnson.

The claimant was never given a final warning telling her that if she missed work one more time that she faced termination. The claimant had two unexcused absences during her almost ten months of employment.

The employer's policy is that a one-time no-call/no-show is a voluntary quit.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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).

An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Under Iowa law an employee must be no-call/no-show for three consecutive shifts to be disqualified from receipt of unemployment insurance benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. Two non consecutive unexcused absences, without a demonstrable history of other unexcused absences or warning is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

## **DECISION:**

The August 11, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/css