

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA A JOHNSON
Claimant

APPEAL NO. 16A-UI-11578-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN CUSTOMER CARE INC
Employer

OC: 10/02/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kayla Johnson (claimant) appealed a representative's October 21, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with American Customer Care (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 9, 2016. The claimant participated personally. The employer participated by Sue Bellefleur, Human Resources Assistant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 30, 2015, as a full-time customer service representative. The claimant signed that she read and understood the employer's New Caller Policy on November 30, 2015. The employer issued the claimant a warning on March 7, April 21, and May 26, 2016. The claimant properly reported her absences three times due to medical issues, five times for matters related to her children, and twice for personal issues. The claimant's children are sixteen, thirteen, eleven and two years old. The employer notified the claimant in each warning that further infractions could result in termination from employment.

On October 6, 2016, the claimant received a telephone call from her child's school as the claimant was pulling into the parking lot at work. The school wanted to talk to the claimant about bullying and the claimant's child. The claimant had spoken to the school on numerous occasions about the same topic. The claimant talked on the telephone in the parking lot as her shift started. She arrived thirty minutes late for work. The employer terminated the claimant on October 7, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes he claimant was discharged for misconduct.

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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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 representative's October 21, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs