

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERI JANZ**

Claimant

**APPEAL NO: 10A-UI-03649-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOINGONA GIRL SCOUT COUNCIL INC**

Employer

**OC: 02-07-10**

**Claimant: Appellant (1)**

Section 96.5-2-a –Discharge/Misconduct  
871 IAC 24.32(7) –Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 25, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 20, 2010. The claimant participated in the hearing. Erin Johnson, Director of Girl Services and Patty Holden, Vice President of Organizational Development, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative specialist for the Moingona Girl Scout Council from October 1, 2007 through February 3, 2010. She was discharged for excessive absenteeism after being warned. The claimant received her first written warning August 13, 2009, for absences August 10 and 11, 2009. She had already developed an on-going and disruptive pattern of absenteeism and was advised her job was in jeopardy. A second written warning was issued to the claimant September 28, 2009, after an unexcused absence September 24, 2009. She called in that day and told her supervisor she was going to be tardy but she texted a co-worker to cover the front desk for her and never reported to work at all. The claimant was absent December 14, 2009, due to her daughter's illness and was over four hours late December 18, 2009. A verbal warning was issued to her December 18, 2009. The claimant was absent due to illness December 21 and 22, 2009. She called the employer at 8:00 a.m. December 23, 2009, and said her daycare center was closed. The employer issued her another verbal warning at that time. The claimant took an hour for lunch December 28, 2009, and then called and said she needed additional time because she had to fix lunch for her children. She was three hours late for work January 6, 2010, and was over two hours late January 8, 2010. A final written warning was issued to the claimant January 8, 2010, when she was late for work. She was either late or absent eight days out of the last 17 days she was scheduled to work due to child care, illness, bad weather and transportation problems. The

employer advised the claimant she would be terminated if she had one more unexcused absence. The claimant was discharged February 3, 2010, when she called her supervisor and said she would not be in because she was "burned out."

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged February 8, 2010, for excessive absenteeism. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Id. 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. Therefore, benefits must be denied.

**DECISION:**

The February 25, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs