

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EUNICE L WHITLEY**  
Claimant

**APPEAL NO. 15A-UI-04117-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 02/22/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Eunice Whitley (claimant) appealed a representative's March 25, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with REM Iowa Community Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 5, 2015. The claimant participated personally for most of the hearing. She self-disconnected near the end of the hearing. The employer participated by Tracy Kennis, Program Director.

**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 May 6, 2014, as a full-time direct support professional. Employees are instructed to access the employer's attendance policy at the self-service on-line portal. The claimant signed for receipt of the information about the portal on May 14, 2014.

The claimant was tardy due to childcare issues twelve times. Twice she did not attend and did not notify the employer she would not attend regularly scheduled house meetings. Once she properly reported her absence due to illness. She was absent four times and tardy once for unknown reasons. The employer issued the claimant written warnings for attendance on October 21, November 25, and December 15, 2014. The employer notified the claimant twice that further infractions could result in termination from employment.

On December 17, 2014, the claimant was tardy for work. At one time she said it was due to childcare issues. At another time she said it was due to transportation problems. The employer terminated the claimant on December 19, 2014, for excessive absenteeism.

## REASONING AND CONCLUSIONS OF LAW:

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

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 March 25, 2015, 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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