

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER JOHNSON**

Claimant

**APPEAL NO. 06A-UI-08569-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES OF IOWA**

Employer

**OC: 07-16-06 R: 04  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 15, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 11, 2006. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. April Vogt, Supervisor; Angie Johnson, Operations Manager; Ginette Enders, Supervisor; and Turkessa Hill, Benefits Administrator, 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 customer service representative for Apac Customer Services of Iowa from November 14, 2005 to July 14, 2006. On April 15, 2006, the claimant called in and stated her child was ill and she would not be in. She was not scheduled April 16, 2006, and worked April 17, 2006. On April 18 and 19, 2006, the claimant called and reported she was ill and would not be in. When she returned to work she received a verbal warning for her absence April 15; a written warning for her absence April 18, 2006, and a final written warning for her absence April 19, 2006, because she did not provide doctor's excuses for those absences. On July 10, 2006, the claimant called the attendance hot line and said she would not be in. On July 11, 2006, the claimant had a black eye. She worked for one hour and then asked to leave. Supervisor Ginette Enders told her it was not advisable because she was already on a final written warning and had been absent the previous day but stated she would see if she could get permission for the claimant to leave. Ms. Enders spoke to a supervisor who said the claimant could not leave but then tried to meet with the operations manager but she was in a meeting. When Ms. Enders went to tell the claimant she did not yet have an answer about whether she could leave the claimant had already left without notifying the employer. On

July 12, 2006, she was a no-call/no-show. She was not scheduled July 13, 2006. On July 14, 2006, she was a no-call/no-show. The employer called the claimant but she did not offer an explanation for her absences and the employer terminated the claimant's employment because of attendance.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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(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). The claimant was a no-call no-show July 12 and July 14, 2006, after leaving without permission July 11, 2006. 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 absenteeism, is considered excessive. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 15, 2006, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$1,272.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/cs