

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KENDRA D HOFF
2106 GRANDVIEW BLVD #A1
SIOUX CITY IA 51104**

**COMMUNITY ACTION AGENCY OF
SIOUXLAND
2700 LEECH AVE
SIOUX CITY IA 51106**

**Appeal Number: 05A-UI-03606-CT
OC: 06/13/04 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kendra Hoff filed an appeal from a representative's decision dated March 25, 2005, reference 02, which denied benefits based on her separation from Community Action Agency of Siouxland. After due notice was issued, a hearing was held by telephone on May 4, 2005. Ms. Hoff participated personally. The employer participated by Scott Orban, Human Resources Director.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hoff was employed by Community Action Agency of

Siouxland from September 24, 2003 until February 28, 2005. She worked full time as a teacher's assistant. She was discharged for repeated tardiness in reporting to work. At all times material to this decision, Ms. Hoff was scheduled to be at work at 6:00 a.m. The facility is open for parents to begin bringing children at that time. Ms. Hoff was the only individual scheduled to be at work at 6:00 a.m. Other staff were not scheduled to arrive until 7:00 a.m.

On January 29, 2004, Ms. Hoff was 40 minutes late because she overslept. As a result, she received a verbal warning on February 2, 2004. On February 23, 2004, she was one hour late for unknown reasons and received a written warning and a three-day suspension. Ms. Hoff was an hour and 15 minutes late on October 29, 2004 because she overslept. On November 1, 2004, she received another written warning and was placed on probation for 60 days. She was advised that she could be terminated if she had attendance issues during the probationary period.

On February 21, 2005, Ms. Hoff was two hours late because she overslept. Although she arrived at work on time on February 23, 2005, she failed to unlock the front doors at 6:00 a.m. as required. The doors were not unlocked until 6:40 a.m. Ms. Hoff did not realize that the doors were locked. The final incident that caused the discharge was on February 25, 2005 when Ms. Hoff was an hour late due to oversleeping. Tardiness was the sole reason for the February 28, 2005 discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hoff was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness is considered a limited absence from work.

Ms. Hoff was clearly on notice that her repeated tardiness was jeopardizing her continued employment. She had received written warnings and had served a three-day suspension due to her tardiness. The warning of November 1, 2004 placed her on probation because of the repeated tardiness. In spite of the warnings, Ms. Hoff still did not conform her arrival time to the employer's expectations. Her discharge was triggered by the fact that she was substantially late two days in the same week. Her tardiness was not by mere minutes. She was two hours late on February 21 and one hour late on February 25, 2005. Her tardiness adversely impacted the employer as parents are not able to leave their children if the facility is not opened as expected.

For the reasons cited herein, the administrative law judge concludes that Ms. Hoff's tardiness constituted a substantial disregard of the standards the employer had the right to expect. The fact that her supervisor disagreed with the decision to discharge has no weight as the ultimate decision was not the supervisor's to make.

DECISION:

The representative's decision dated March 25, 2005, reference 02, is hereby affirmed. Ms. Hoff was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs