

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACY L GREEN**  
Claimant

**APPEAL NO. 09A-UI-08940-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP  
PER MAR SECURITY SERVICES**  
Employer

**OC: 05-10-09 R: 04  
Claimant: Appellant (1)**

Iowa Code 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 June 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 8, 2009. The claimant did participate. The employer did participate through Derick Burkeybile, Operations Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a security officer floater part time beginning October 9, 2008 through December 28, 2008 when she was discharged.

The claimant was notified of her work schedule for December 24 and December 25 approximately two weeks prior to the date she was expected to work. Because it was Christmas the dispatchers were notifying employees early about their work schedule. The claimant was a no call-no show for work on both December 24 and December 25.

When the dispatcher reached her on December 25 the claimant refused to come into work saying she did not know she had to work. The dispatcher said the claimant had been notified and she was discharged on December 28 for failing to show up for two scheduled work shifts. The claimant did work her shift on December 19, less than one week prior to her missed shifts, indicating that she had been called and given her work shifts for the week in question.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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(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's allegation that she had not been called for two weeks prior to her work shift is not credible in light of the fact that she worked her scheduled shift on December 19. She had been notified of her work shifts for that week which did include December 24. The claimant simply did not want to work on December 24 and December 25 so said she had not been notified. The administrative law judge is persuaded that the claimant had been notified of her work shifts but chose not to work. Failure to report to work is misconduct.

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 in the attendance policy that unexcused absences could result in termination of employment and the final absences were not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The June 12, 2009, reference 01, decision is affirmed. 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs