

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE C CAVINESS
Claimant

APPEAL NO. 09A-UI-17871-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING
& PROFESSIONAL SERVICES LLC**
Employer

**Original Claim: 10/11/09
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 12, 2009 (reference 04) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 7, 2010. Claimant participated. Employer participated through office manager Cyd Hall.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a temporary packager at QRS Foods in Spencer and was separated from employment on October 9, 2009. She had been riding with her daughter, who had family problems and inconsistently provided transportation. She does not have a driver's license and does not have a vehicle. Claimant missed work due to a lack of transportation on October 5, 8, 9, and 12, 2009. Danielle and Cheryl both had verbal discussions with claimant telling her that she must find reliable transportation in order to continue working.

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 § 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). An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was notified that she must resolve her transportation issues and claimant testified she understood that transportation was her responsibility. The final absence, in combination with the claimant's history of unexcused absenteeism related to a lack of transportation, is considered excessive. Benefits are withheld.

DECISION:

The November 12, 2009 (reference 04) decision is modified without change in effect. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw