

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA M MARSH**  
Claimant

**APPEAL NO. 09A-UI-05569-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 01/25/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Pamela M. Marsh filed a timely appeal from an unemployment insurance decision dated March 31, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held May 5, 2009 with Ms. Marsh participating. Human Resources Business Partner Jennifer Smith and Food and Nutrition Operations Lead Terri Hill testified for the employer, Alegent Health, which was represented by Leslie Buhler of TALX UCM Services. Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Pamela M. Marsh was employed by Alegent Health from February 3, 1992 until she was discharged January 26, 2009. She last worked as a cook.

Ms. Marsh was discharged because of attendance violations. She was absent on January 26, 2009 because of car problems. She was also absent on December 8, 2008 for reasons she does not recall. She had been tardy on November 21, 2008. She had been absent on some previous occasions because of personal illness or because of behavioral problems involving her son. However, she was also absent in May and in February for reasons she does not recall.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence because of matters of personal responsibility such as transportation are deemed to be unexcused. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The evidence in this record establishes a final incident in which the absence was due to personal transportation problems. It also establishes one instance of tardiness and several instances of absence for which the claimant had no recollection of the reason. Since she clearly remembered the occasions on which she was absent due to illness or family problems, the administrative law judge concludes that the other absences were due to matters of personal responsibility. Considering the number of these absences the administrative law judge concludes that the evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated March 31, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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