

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

JENNIFER S YOUDE
235 ASH ST APT #6
CARLISLE IA 50047

HOUSBY MACK INC
4747 NE 14TH ST
DES MOINES IA 50313

Appeal Number: 05A-UI-01679-DWT
OC: 01/16/05 R: 02
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

STATEMENT OF THE CASE:

Jennifer S. Youde (claimant) appealed a representative's February 9, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Housby Mack, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2005. The claimant participated in the hearing. Mark Skelley and Sid Woody appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 13, 1998. Prior to the summer of 2004, the claimant did not have any problems at work. Even after attendance problems developed, the claimant's work was not a problem when she was at work.

Starting the summer of 2004, the claimant's relationship with her boyfriend created problems at work. Skelley, the claimant's supervisor, talked to the claimant and understood she had personal issues she needed to address. The claimant took time off, August 10 through 13, as a vacation in an attempt to get her personal issues resolved. Management talked to the claimant several times urging her to resolve her personal issues so her attendance did not affect her employment.

Steve Davis became the claimant's supervisor in September or October. On October 29 and December 9, Woody talked to the claimant about her poor attendance. Woody asked her to get her problems under control so she would not jeopardize her job. On December 15, the claimant had to take care of some personal business before she reported to work. She left a message on her co-worker's voice mail, but did not contact Davis. The claimant knew the employer expected employees to contact their supervisor when they were going to be late for work. When the claimant reported to work 90 minutes late, she learned the co-worker was not at work. As a result, the employer had no idea the claimant was going to be late for work. The employer gave the claimant a written warning and a three-day suspension for reporting to work late without properly contacting the employer. The employer told the claimant that if this happened again, she would be discharged.

From December 16 through January 2, 2005, the claimant reported to work as scheduled. On January 3, the claimant did not report to work because of snow or road conditions. On January 4, the claimant worked, but on January 5, she did not because of snow and road conditions. The claimant properly reported these absences. On January 6, 2004, the claimant notified the employer that she had a doctor's appointment to remove some stitches. The claimant indicated she would call the employer later to let them know if she would be working that day. After the claimant had her stitches removed in the morning, she went home. The claimant did not go to work or contact the employer on January 6. On January 7, 2005, the claimant notified the employer she had a toothache, but would keep the employer posted. The claimant called dental offices and learned no one could do anything because her tooth was infected. The employer expected the claimant to call again on January 7 to let the employer know if she was going to work. Again, the claimant did not go to work or notify the employer that she was unable to work at all on January 7, 2005.

The employer discharged the claimant on January 10, 2005. The employer discharged the claimant for repeatedly failing to work as scheduled and for failing to contact the employer again on January 6 and 7 to let the employer know if she could or could not work part of the day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material

breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood her job was in jeopardy because of attendance problems that had developed since the summer of 2004. Even though the claimant properly reported she would not be at work at the beginning of her shift on January 6 and 7, she left a message indicating she would keep the employer advised about her availability to work. The claimant provided no reasonable explanation for failing to contact the employer on either January 6 or 7 so the employer knew if the claimant planned to work at all either of these days. The claimant's failure to do this when she understood her job was in jeopardy because of her attendance shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. Therefore, as of January 16, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 9, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 16, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf