

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA SUESENS
Claimant

APPEAL NO: 08A-UI-09495-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

**OC: 09-14-08 R: 04
Claimant: Appellant (1)**

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 October 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2008. The claimant participated in the hearing. Terry Moffitt, Director of Operations, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew member for Kentucky Fried Chicken from August 12, 2008 to September 16, 2008. She was discharged from employment due to a final incident of absenteeism that occurred September 15, 2008. The claimant was warned August 31 and September 14, 2008, after accumulating two unexcused absences that she faced termination from employment upon another incident of unexcused absenteeism. Absences occurred previously on August 31, 2008, when she did not have childcare because the employer did not complete the paperwork required by DHS for her childcare and on September 14, 2008, when she was a no-call no-show because she did not know she was scheduled to work that day. There is no evidence that these absences were related to illness. On September 15, 2008, the claimant was 30 minutes tardy because she did not have childcare but failed to call the employer and notify it about her situation. The employer terminated her employment September 16, 2008, for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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). While the claimant's absence August 31, 2008, may be attributable to the employer's failure to respond to the paperwork required by DHS for childcare, her absence September 14, 2008, was due to her failure to correctly record her schedule on her calendar and her tardiness September 15, 2008, was unreported and due to a lack of childcare. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism during her 34 days of employment, is considered excessive. Consequently, benefits are denied.

DECISION:

The October 9, 2008, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs