

**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**

**BEVERLY A RANEY
1587 – 280TH ST
OSKALOOSA IA 52577-9004**

**DOOLEY'S INC
PO BOX 32
OSKALOOSA IA 52577-0030**

**Appeal Number: 06A-UI-07422-H2T
OC: 04-02-06 R: 03
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/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 24, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 10, 2006. The claimant did participate. The employer did participate through Keith Baxter, Plant Manger. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on April 24, 2006. The claimant did receive the decision. The claimant went to her local workforce office on April 27, 2006 and turned in her appeal paperwork. The Oskaloosa local office employees never faxed the claimant's appeal letter to the Appeals bureau in Des Moines. When the claimant had not heard anything on her claim after several months, she returned to her local office where her appeal paperwork was discovered laying unsent on a desk. The local office then faxed the appeal letter and paperwork to the Appeals bureau in Des Moines on July 25, 2006, some three months after the claimant had originally turned it in to them.

The claimant was employed as a production worker part time beginning April 14, 2004 through March 27, 2006 when she was discharged for excessive absenteeism.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on March 27, 2006. The claimant was last warned on January 24, 2006, that she faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on January 18, 19, 2006. After she was a no-call/no-show for work on January 18 and 19, the claimant called the employer on January 24 to inquire as to whether she still was employed. The employer told her she could continue her employment if she did not miss any more work. The claimant told Mr. Baxter she was having some personal problems and he granted her another week off work. The claimant was off work January 24, 25 and 26. The claimant's absences due to properly reported illness were not counted against her, nor was the time off she was granted to get her personal life in order used to determine if her absences were excessive. The claimant did not show up for work by 7:30 a.m. on March 27, 2006 nor did she call before the start of her shift to report that she would be absent. (She had agreed to work on this Monday to make up for her properly reported absence due to illness on March 23, 2006) The claimant called Mr. Baxter late in the afternoon of March 27, 2006 to say she was not feeling well. The claimant had received the employer's handbook which put her on notice that she was to call before her work shift began to report her absences. The claimant had just the week prior demonstrated her ability to comply with the handbook by calling in prior to the beginning of her shift when she was absent due to illness on March 23. When Mr. Baxter talked to the claimant on the afternoon of March 27, he told her to come and talk to him at 7:15 a.m. on March 28 to see about keeping her job. The claimant did not show up for the March 28 meeting with Mr. Baxter. She went to the employer's location on the afternoon of March 28 to pick up her paycheck. At that time she was told she was discharged for failing to report to work and failing to call in to properly notify the employer of her absence.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did file a timely appeal by taking her paperwork to the local office. The Oskaloosa local office did not send the claimant's appeal paperwork to the Appeals bureau in Des Moines as they should have. The local office waited almost three months before forwarding the claimant's appeal paperwork to the Appeals bureau. The delay in the claimant's appeal was due to agency error and her appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant was told she either had to resign or she would be discharged. Under those circumstances her choice to voluntarily resign makes her separation a discharge from employment.

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 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, is considered excessive. Benefits are withheld.

DECISION:

The April 24, 2006, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

tkh/pjs