

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANN PEREZ**  
Claimant

**APPEAL NO: 07A-UI-07329-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 06-24-07 R: 12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 19, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 15, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jessica Ayala, Human Resources Clerk and Jodie Martin, Staffing Specialist, 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 full-time placer for Kraft Pizza from April 23, 1990 to July 12, 2007. The employer uses a no-fault attendance policy. After four occurrences in eight months an attendance memo is issued to the employee; after three additional occurrences in the last six months a first written warning is issued; after three additional occurrences in the last six months a second written warning is issued; after three additional occurrences in the last six months a third written warning is issued; and after that more than one occurrence within a two month period results in termination. The claimant received a memo March 15, 2003, for accumulating four occurrences in the last eight months; a first written warning for tardiness September 20, 2003; a first written warning for absenteeism July 23, 2004; a second written warning for absenteeism November 21, 2004; a first written warning for tardiness October 7, 2005; a second written warning for tardiness December 16, 2005; a second written warning for absenteeism April 2, 2006; a third written warning for tardiness October 7, 2006; and a third written warning for absenteeism November 4, 2006. After the third written warning she was allowed to accumulate one occurrence every two months for a period of one year. The claimant was absent due to properly reported illness April 21 and 22, 2007, and June 22, 2007, and the employer terminated her employment for violating the attendance policy.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The July 19, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs