

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMILY DAVIDSON**  
Claimant

**APPEAL NO: 10A-UI-08109-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**  
Employer

**OC: 03-28-10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 17, 2010, 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 July 22, 2010. The claimant participated in the hearing. Christy Albert, Human Resources Coordinator and Laticia Rhone, Customer Service Manager, 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 customer service coach for United States Cellular from October 9, 2006 to March 10, 2010. The claimant was on FMLA from October 17, 2009 to November 17, 2009, due to kidney stones. She worked extra hours in pain until December 3, 2009, and then met with the director and told her she thought she had returned to work too soon and was having problems with the Reed Group, the employer's third party FMLA and disability carrier, and was afraid to go back on leave. The director told the claimant her health was more important and the claimant went on leave December 3, 2009. She continued working with the Reed Group and she and her physician sent the medical information it requested. Her kidney specialist did not want to complete the paperwork because it was too much work so he asked the claimant to have her family physician do the required paperwork and he did so. She followed up with the Reed Group and it indicated it had all of the information it needed. In mid-January 2010 the claimant received a letter from the Reed Group denying her claim and told her she could appeal its decision and the claimant did file an appeal from its decision. When the claimant asked why her claim was denied the Reed Group said it was because her family physician said she had a genetic kidney disorder causing her kidneys to produce acid which in turn caused her to have 60 kidney stones and be hospitalized for 22 days in the last year. The Reed Group told the claimant it needed a specific name of her disorder. She asked her physician for a specific name and was told there was no specific name for what she suffered

from. Her doctor was puzzled about why it needed a specific name when it had all of the other paperwork he completed. She did not have a case manager at the Reed Group so did not work with the same person on a regular basis. The claimant spoke to Customer Service Manager Laticia Rhone about the situation and she confirmed all of the required paperwork had been received but stated they needed a specific diagnosis and the claimant could not provide one. She talked to Ms. Rhone again March 1, 2010, and told her she was on a trial medication for a few weeks because her kidneys were getting weaker and weaker and informed Ms. Rhone she did not want to lose her job. She explained she would not have a doctor's release to return to work until the next time she saw her doctor and he only worked on Tuesdays. She did not have another appointment scheduled as of March 1, 2010. The claimant had no idea the employer expected her to return to work March 2, 2010, because she did not have a doctor's release or a doctor's appointment scheduled but the employer considered her a no-call/no-show March 2, 3 and 4, 2010. She did not receive any messages from the employer. On March 7, 2010, she received her belongings from work on her front porch. On March 8, 2010, the claimant attempted to call Ms. Rhone but was unable to reach her to find out what was going on. On March 9, 2010, she called Human Resources and left a message stating she was going to see her physician March 11, 2010, and would bring in a release assuming she received one. She thought the employer was waiting for her release and was unaware her employment had been terminated until she received a certified letter stating she was discharged for job abandonment. She has not experienced any kidney stones since February 2010.

#### **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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19,

subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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). The claimant was off work due to kidney disease from October 17 to November 17, 2009, on FMLA and then off again for the same reason from December 3, 2009, until her termination date of March 10, 2010. She provided all medical paperwork requested by the Reed Group until they required a specific name for her illness and the physicians she was working with could not provide one. It was not the claimant's fault if her doctors said there was no specific name and could not give the Reed Group one. She was not released to return to work until March 11, 2010, but unbeknownst to her the employer expected her to return to work March 2, 2010, and considered her a no-call/no-show March 2, 3 and 4, 2010, and determined she abandoned her job. The claimant maintained contact with the employer throughout her absence and was under medical care during that time. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Additionally, the claimant has not had a kidney stone since February 2010 and is able and available for work. Therefore, benefits are allowed.

**DECISION:**

The April 27, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css