

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA EVEN**  
Claimant

**APPEAL NO: 11A-EUCU-00652-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCDONALDS**  
Employer

**OC: 07-06-08**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 3, 2011, reference 08, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 7, 2011. The claimant participated in the hearing. Jessica Hamlin, store 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 part-time crew member for McDonalds from April 30, 2011 to June 27, 2011. She called in and reported she was ill June 21 and 22, 2011. She told the employer June 22, 2011, she would be off the next two days with a doctor's excuse for June 21 through June 28, 2011, because People's Clinic referred her to Iowa City for treatment of two abscessed teeth, and consequently she did not call in to report her absences June 23 and 24, 2011. The employer requested a meeting with the claimant June 27, 2011, and terminated her employment at that time for two no-call, no-shows per the employer's 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). While the employer did not have a record of the claimant calling in to report her absences June 23 and 24, 2011, the claimant credibly testified she told the person she talked to June 22, 2011, she was being referred for treatment in Iowa City and would not be in for a few days. The claimant should have called to report her absences but believed the employer was aware of her situation and had a doctor's excuse covering her absence from June 21 through June 28, 2011. Under these circumstances, the administrative law judge concludes there was a miscommunication between the claimant and the employer and there was no intentional misconduct on the part of the claimant as required by the definition of disqualifying job misconduct under Iowa law. Consequently, benefits are allowed.

**DECISION:**

The August 3, 2011, reference 08, 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/kjw