

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L BAUGHN
Claimant

APPEAL NO. 08A-UI-09076-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A & J ENTERPRISES INC
Employer

OC: 09/07/08 R: 04
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 1, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 3, 2008. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Cassandra Byrd, district manager; Gail Countryman, subordinate; and Holly Aldridge, alternate store supervisor. Eric Huseman hung up from the conference call during the hearing and was not available when the administrative law judge attempted to call him again before the record was closed. The administrative law judge took judicial notice of the administrative record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time general manager from January 2007 until September 5, 2008, when she was discharged. Claimant's mother called Byrd on September 2 to report her expected multiple-day absence due to problems with a medical procedure. She was a no-call, no-show on September 4 because of the side effects of her pain medication, she believed her mother told Byrd she would be absent multiple days, her doctor's note excused her absence through September 7, and store staffing was covered. Byrd called her on September 4 at about 4:30 p.m. and could not reach her, so she left a message on her voice mail. She also called on September 5 at 10:30 a.m. and left claimant a message to return her keys. Claimant had been absent on July 14 when she left work early without notice to Byrd because her daughter went to the hospital. On August 31 she called in sick and on September 1 she called in for an unknown reason, but it was likely related to the illness reported on September 2. On September 5 she provided a medical document for a work-related back injury but she had not filed a report of the injury before then. Byrd gave her a written warning on June 16 about attendance and reporting absences.

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 or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Although the September 4 absence was not reported, employer was aware of the circumstances of the absences the prior two days; and while claimant's mother might have continued to report for her or present the medical excuse for the period through September 7, claimant was not physically able to report because of her medication side-effects. Because the final absence for which she was discharged was related to a reasonably known illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 1, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw