

**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**

**DONNA TRENT
3108 WAGON RD
STUART IA 50250**

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318**

**Appeal Number: 06A-UCFE-00019-ET
OC: 04-30-06 R: 02
Claimant: Respondent (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) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 30, 2006, 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 July 10, 2006. The claimant participated in the hearing with Union Representative Randy Kreuger. Mike Dickerson, Distribution Manager, participated in the hearing on behalf of the employer.

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 mail handler for the US Postal Service from February 4, 1995 to January 27, 2006. The claimant was placed on a last chance agreement

September 23, 2006. Under the agreement the claimant was not allowed to have more than two unscheduled absences in the next six months, needed a doctor's excuse for any absence due to illness and was to report to EAP and follow any recommendations made. The claimant was absent December 22, 2005, due to properly reported illness and January 6, 2006, for an absence covered by FMLA. She was absent due to illness January 18, 19 and 20, 2006, and properly reported her illness each day. She went to the local doctor January 18, 2006, and received a note covering that date. She did not ask for a note covering any other dates because she expected to be able to return to work January 19, 2006. On January 21, 2006, the claimant returned to work with her note for January 18, 2006. She gave her supervisor the note and was told she needed to provide a note for all days missed the next time she was absent. The claimant was off work January 23 and 24, 2006. She went to her own doctor January 24, 2006. On January 25, 2006, Supervisor Tina Goodale told the claimant she needed to provide a doctor's excuse for January 19 and 20, 2006, by January 27, 2006. On January 26, 2006, the claimant called her doctor's office to ask for an excuse but was unable to pick it up that day because of other obligations. On January 27, 2006, the claimant stopped by her doctor's office to pick up the note but was told it was not ready. She made arrangements to have it faxed to Ms. Goodale and then informed Ms. Goodale she would be getting a fax that afternoon. At 4:00 p.m. Ms. Goodale told the claimant she had not received the fax so the claimant called her doctor's office and was told the doctor had left and would not be back until January 31, 2006. The claimant asked if her nurse or another doctor could fax the statement but the receptionist said that was not allowed although they would fax the note January 31, 2006. When the employer had not received the note by the end of the claimant's shift January 27, 2006, it terminated her employment.

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 claimant did not provide a doctor's excuse for January 19 and 20, 2006, she did provide one for January 18,

2006, which indicates she was ill. The claimant properly reported her absences January 18, 19 and 20, 2006, and would have been able to provide an excuse for the other dates January 31, 2006. Because the final absence for which she was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Consequently, benefits are allowed.

DECISION:

The May 30, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kkf