

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETHANY KINI
Claimant

APPEAL NO: 11A-UI-11379-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 06-26-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2011, 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 September 22, 2011. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 representative for APAC Customer Services from October 4, 2010 to February 25, 2011. She was raped in August 2008 and the trial was scheduled in late February or early March 2011. She was suffering from severe emotional and anxiety issues related to the crime and upcoming trial and called the employer to report she was ill and would not be at work for a few days prior to February 25, 2011, while she attended to her emotional and mental health and sought help through the Employee Assistance Program (EAP). She believed the employer was going to terminate her employment for absenteeism and applied for and accepted a position with Americinn February 20, 2011. She called her APAC supervisor to check on the status of her job and was told her employment would most likely be terminated so the claimant chose to voluntarily quit and go to work for Americinn rather than be discharged by APAC without having another job.

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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

While the claimant chose to voluntarily quit rather than have her employment terminated, she effectively was forced to do so or face discharge. Consequently, her separation is considered a termination for the purposes of unemployment insurance benefits. The next issue is whether the claimant's separation from employment was disqualifying job misconduct. 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 understandably experiencing mental health issues following her rape and the upcoming trial, and her properly reported illnesses prior to the scheduled trial should not be considered any differently than absences due to properly reported physical illnesses. The employer did not participate in the hearing and provide any evidence of disqualifying misconduct on the part of the claimant as is required, and its burden of proof, in a termination of employment case. Therefore, the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. 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. Benefits are allowed

DECISION:

The August 18, 2011, reference 01, decision is reversed. 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/css