

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY CONN
Claimant

APPEAL NO: 14A-UI-07521-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

OC: 08/18/13
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 July 8, 2014, 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 August 13, 2014. The claimant participated in the hearing. The employer sent a fax indicating it would not be participating in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and 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: A disqualification decision was mailed to the claimant's last-known address of record on July 8, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 18, 2014. The appeal was not filed until July 23, 2014, which is after the date noticed on the disqualification decision. The reason the claimant did not file a timely appeal is because she has another fact-finding interview pending and believed that was a continuation of this issue, which while incorrect, explains her delay in filing her appeal. Consequently, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time production worker for Manpower last assigned to Alfagomma from February 19, 2014 to June 16, 2014. She was discharged for attendance issues.

The claimant was suffering from gallbladder problems. As a result she was absent with doctor's notes May 2, 24, 25, and June 2, 2014. She also had to leave early due to illness May 27, 2014. Her last gallbladder related absence with a doctor's excuse occurred June 11 through 13, 2014. The employer notified her that her employment was terminated due to excessive absenteeism June 16, 2014.

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 § 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.

Iowa Admin. Code r. 871-24.32(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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The July 8, 2014, reference 08, 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/pjs