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

BRENDA L DAVIS
Claimant

APPEAL NO. 09O-UI-07534-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 08/17/09
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 17, 2009, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 11, 2009. Claimant participated. Employer participated through Nicole Hrabak and Ken Leffler.

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 most recently worked full-time as a telephone sales representative (TSR) and was separated on February 20, 2009. Her last day of work was January 30, 2009. Operations manager Daryl Heyda granted her a medical leave from work from February 2 through 6 and gave her additional time off through February 13 after she advised him she was diagnosed with pneumonia. He instructed her to return to work when she had a release. She called the "force desk" according to procedure each day of her absence, and left messages for a floor supervisor on February 11 or 12 but her calls were not returned. When she was released to return to work and reported with medical documentation to that effect on February 13 the force desk attendant told her he did not know if she was still an employee. She attempted to contact her supervisor but could not find him. She spoke with a team member and asked for a message to be relayed to her supervisor to have him call her. She later confirmed the message was given and her supervisor had said he would call her but did not.

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.

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. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The March 17, 2009, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css