

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA GATES
Claimant

APPEAL NO. 08A-UI-06776-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

**OC: 02-03-08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.5-1-j – Reassignment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 15, 2008, reference 02, 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 August 7, 2008. The claimant participated in the hearing. Julie Oeltjenbruns, Staffing Consultant and Linda Green, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct and whether she sought reassignment from 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 leasing agent/qualifier for Adecco USA from February 17, 2007 to May 15, 2008. She was last assigned to work at Chapel Ridge Townhouses but was absent between two and thirty hours, eight of the fourteen weeks she was scheduled to work because of a chronic illness. She had doctors' excuses for each of her absences. The client asked that the assignment end due to her attendance. The employer's handbook states employees should contact the employer within 48 hours of the completion of an assignment but it does not have employees sign a separate form indicating they must contact the employer within 72 hours to notify it of their availability in accordance with Iowa law.

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). In this case the claimant was absent due to a chronic illness and her absences cannot be considered misconduct. Because the final absence was related to properly reported illness, with a doctor's excuse, no final or current incident of unexcused absenteeism has been established.

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The remaining issue is whether the claimant sought reassignment from the employer. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because it notified her of the end of the assignment. Additionally, the employer did not provide a separate form at the time of hire instructing the claimant that she must contact it within 72 hours of the completion of an assignment to notify it of her availability. For the above stated reasons benefits are allowed.

DECISION:

The July 15, 2008, reference 02, decision is affirmed. 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