

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY A MANATT**  
Claimant

**APPEAL NO. 06A-UI-09573-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONALDSON COMPANY INC**  
Employer

**OC: 08-13-06 R: 02  
Claimant: Respondent (1)**

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 September 18, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 16, 2006. The claimant did participate along with her witnesses Rich Gilbreath. The employer did participate through Diana Duncan, Human Resources Administrator, Shane Rosenberg, Production Supervisor and was represented by Tracy Taylor of TALX UC eXpress. Employer's Exhibit One was received. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant discharged for work related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a material handler full time beginning September 8, 2003 through August 7, 2006 when she was discharged.

On the morning of August 4, 2006 the claimant was to be at work at 6:30 a.m. She reported to the employer's place of business on August 4, 2006 around 11:00 a.m. and presented a doctor's note taking her off work and informing the employer that she would be undergoing surgery on August 15, 2006. The doctor's note specifically indicated the claimant visited her physician on the morning of August 4, 2006. The claimant worked at her part-time job as a bartender on the evening on August 4, 2006. When the employer discovered that the claimant had worked at her part-time job, but not for them on August 4 she was discharged. When the claimant was told that she was being discharged, it was for excessive unexcused absences not for her failure to properly report her absence due to her knee injury on August 4, 2006. The claimant was discharged not because she improperly reported her absence but because she worked on the evening of August 4 at her part-time job and because her employer believed her absences to be excessive. The claimant missed work on August 4 to visit the doctor. She obtained a doctor's note which she provided to the employer on the same day which kept her off work for August 4 and the following weekend.

**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). An employer's no fault attendance policy is not dispositive of the issue of whether the claimant is entitled to unemployment insurance benefits. The claimant was clearly absent from work due to an injury from which she was removed from work by her treating physician. She went to the doctor the morning of her last absence and reported to the employer that same day with a doctor's note keeping her off work. When the employer later discovered that the claimant was working her part time job that same evening, they made the decision to discharge her. The claimant was discharged for excessive absences not for her failure to properly report her absence on August 4. The employer never told the claimant she was being discharged for failing to properly notify them of her absence on August 4 leading the administrative law judge to conclude that the fact that the claimant reported her absences late was not an important deciding factor for the employer. The claimant could not work due to a doctor's note. Her absence on August 4 cannot be found volitional and is excused by a doctor's note. 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 and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 18, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs