

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA P SCHOENBERGER**  
Claimant

**APPEAL NO. 10A-UI-03675-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOSTON WINDOW CLEANING INC  
THE MILLARD GROUP**  
Employer

**Original Claim: 02/07/10  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 26, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 20, 2010. Claimant participated. Employer participated through project manager and immediate supervisor Shawn Bandy. Claimant's Exhibit A was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of 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 cleaner for two-and-a-half years and was separated from employment on February 4, 2010. Her last day of work was February 2, 2010. Bandy said he did not hear from her after February 2, 2010, but she sent him an e-mail message asking for more time off after her mother died on January 20, 2010 and the wake was on January 24, 2010. He left claimant a message saying FMLA was denied and she had to report to work on February 3, 2010. Her father was ill and she took him to the emergency room on February 4 about the time her shift was supposed to start at 4:30 p.m. She also had a water main break, a dental visit for a broken tooth, and was responsible for her mother's arrangements and estate, and there were other very stressful issues all going on at the same time. She had a vacation time surplus. Katie Novak called claimant and told her if she did not report to work that night, she would lose her job. Claimant said she was not sure if she was mentally capable and Novak threatened her job, so claimant believed she had been fired.

**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. Since her absence was related to her recently widowed father's illness and emergency room treatment, claimant's absence was excused. Benefits are allowed.

**DECISION:**

The February 26, 2010 (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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw