

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY KRUCKENBERG
Claimant

APPEAL NO: 15A-UI-10222-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CG ACQUISITION CO
Employer

OC: 08/03/14
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 23, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 23, 2015. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUES:

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 23, 2015. The claimant received the decision on approximately August 1, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 2, 2015. That date fell on a Sunday so the appeal was actually due August 3, 2015. The appeal was not filed until August 24, 2015, which is after the date noticed on the disqualification decision. The claimant's appeal was late because she received two separate decisions regarding this employer. Shortly after she received the decision regarding this case, she received another decision about another case involving this employer which allowed benefits and consequently the claimant did not realize she needed to file an appeal until after she received the explanation decision. At that time she contacted the Department but had to wait until the following Tuesday to get an appointment which increased the amount of time her appeal was late. Because the decisions the claimant received appeared to her to be contradictory, with the second one allowing benefits, and she did not know she still needed to appeal the first decision, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time inspector on the cab crew for CG Acquisition from June 9, 2014 to April 9, 2015. She broke her foot while at home March 8, 2015. She was in a boot and on crutches and could not perform her regular duties in the warehouse. Consequently, her physician excused her from work from March 9 through July 13, 2015.

When the claimant notified the employer of her injury and went in to complete paperwork for the employer after leaving her doctor's office March 9, 2015, the employer notified her that if she could not return by April 9, 2015, it could not hold her job beyond that date. Because the claimant was not released to return to work until July 13, 2015, she was unable to return to work and her employment was terminated effective April 9, 2015.

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.

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.

The claimant sustained a non-work related injury March 8, 2015, and reported her injury to the employer the following workday which was March 9, 2015. At that time she was told if she could not return to work by April 9, 2015, her employment would be terminated. The claimant had not yet been released to return to work by her doctor at that time and her employment was subsequently terminated. 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 23, 2015, reference 01, decision is reversed. The claimant's appeal is timely. 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