

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA B ZUGMAIER
Claimant

APPEAL NO. 07A-UI-06754-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER SERVICES
OF IOWA LLC**
Employer

**OC: 06/10/07 R: 04
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 25, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 26, 2007. Claimant did not participate. Employer participated through Turkessa Hill. Angie Johnson was not available to participate.

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 was employed as a full time customer service representative (CSR) from March 14, 2005 until June 11, 2007 when she was discharged. She was nearly an hour late on June 11, a day she had traded to work instead of a day later in the week.

Claimant reported all absences and was absent on May 12, 15, 16 and 17 because of a family medical crisis for which she was assigned one point. She was late to work on May 22 due to health issues and was issued a half point. On May 25 and June 5, claimant missed work due to health issues and was given two points. On June 9, she left work early because of chest pains and was docked another point. Claimant did not provide the requested medical documentation or Family Medical Leave Act (FMLA) paperwork for any of these absences except one on May 31, which employer excused, because she did not have health insurance or the funds to do so. Employer issued a final written warning to claimant about her attendance on June 6, 2007.

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. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. In spite of employer's requiring a medical excuse for the absences related to illness, claimant's absences were excused. The inability to afford a medical appointment or the medical form fees because of lack of health insurance excused the failure to provide a medical excuse or release. Although the last incident of tardiness was unexcused, one unexcused absence without a demonstrable history of other unexcused absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The June 25, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css