

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE SIMMONS

Claimant

APPEAL NO: 12A-UI-12903-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDGWICK CLAIMS MANAGEMENT

Employer

OC: 09-23-12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2012, reference 01, 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 November 29, 2012. The claimant participated in the hearing. Judy Barlow, Colleague Resources Manager; Ellen O'Connor, Service Center Team Lead; and Donna Klauza, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is 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: The claimant was employed as a full-time service center representative for Sedgwick Claims Management from September 19, 2011 to September 27, 2012. She was discharged for exceeding the allowed number of attendance occurrences within the employer's progressive disciplinary policy. The claimant received a record of verbal counseling February 16, 2012, for an incident unrelated to her attendance (Employer Exhibit Five). The claimant suffers from Type One Diabetes. She was absent due to properly reported illness November 3, 2011, and received one occurrence. She was absent due to properly reported illness December 2, 5 and 6, 2011, and received one occurrence. She was absent due to properly reported illness December 15, 2011, and received one occurrence. She was absent to the best of her recollection due to weather February 7 and March 2, 2012, as she lives 30 miles away from the employer and received one occurrence for each incident. On March 30, 2012, the claimant received a first written warning for attendance after accumulating five occurrences (Employer's Exhibit Three). The employer reviews employees' attendance daily but could not explain why it waited 28 days before issuing the warning to the claimant. She was absent due to properly reported illness June 14, 15 and 18, 2012, and received one occurrence. The employer waited over one month before issuing the claimant a final written warning July 23, 2012, for the June 2012 absences (Employer's Exhibit Two). She was absent and in the intensive care unit

due to properly reported illness September 12 and 13, 2012, because she had diabetic ketoacidosis and the employer terminated her employment September 27, 2012.

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). At least five of the claimant's seven attendance occurrences, including the last one, were due to her diabetes and were properly reported. Additionally, while the employer did give the claimant two written warnings, it waited 28 and 35 days respectively before issuing those warnings to the claimant. Furthermore, the employer, who stated it reviewed attendance daily, waited two weeks from the date of the claimant's last absence to notify her that her employment was terminated. The delay in warnings and termination was not explained by the employer and disciplinary action should be taken in closer proximity to the event that caused the reprimand in fairness to employees. Under these circumstances, the administrative law judge must conclude the claimant's absences were due to properly reported illness and as such no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The October 15, 2012, reference 01, 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