

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIRIAH MURPHY**

Claimant

**APPEAL NO: 09A-UI-17000-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**

Employer

**OC: 10-11-09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 3, 2009, 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 December 16, 2009. The claimant participated in the hearing. Gayle Gonyaw, Staffing Specialist, participated in the hearing on behalf of the employer.

**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 production worker for Manpower, last assigned to Winegard Company, from January 13, 2009 to October 8, 2009. The customer requested her assignment end because of her attendance. The claimant was absent January 15, 2009, because it was very cold out and her car would not start; she was absent January 29, 2009, because her son was ill and she provided a doctor's excuse; she was absent May 4, 2009, because her son was ill; she was absent May 25, 2009, because her son was ill and she asked for a two-week leave of absence and the employer granted her one week; she was absent September 2, 2009, because her son had a follow-up appointment in Iowa City and she provided a doctor's excuse; and on October 8, 2009, she was sent home after working four hours because she was ill. The claimant's son had a brain condition and required brain surgery and he had several illnesses and appointments related to that while she was working for Winegard. She provided doctor's excuses for each of her absences except the January 15, 2009, absence, and the final absence because her employment was terminated before she could see a physician. She received a verbal warning about her attendance January 29, 2009, stating she could not miss another day during the next 60 days; a verbal warning May 25, 2009, stating the employer was concerned about her attendance as she had not worked a 40-hour week during the previous 12 weeks and she was not calling Manpower to report her absences as required in addition to calling Winegard; and she received a written warning September 2, 2006, stating she could not miss another day during the next 60 days or her employment would

be terminated. After she was sent home due to illness October 8, 2009, her employment was terminated.

**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). All but one of the claimant's absences were due to the illness of her seriously ill son or herself and were properly reported to Winegard. While the claimant should also have reported her absences to Manpower she did inform Winegard so it knew she would not be in and Manpower has a staff member permanently assigned to Winegard. Because the final absence was related to properly reported illness and the claimant was sent home by Winegard, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The November 3, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs