

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN NELSON
Claimant

APPEAL NO. 07A-UI-02508-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OFIOWA
Employer

**OC: 02-04-07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 1, 2007, 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 March 28, 2007. The claimant participated in the hearing. Sue Lester, Human Resources Manager, 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 customer service representative for APAC Customer Services of Iowa from February 20, 2006 to February 9, 2007. She was discharged for excessive absenteeism. The claimant received a written warning for attendance February 2, 2007, after absences January 22, 23, and 24, 2007, because her three-year-old son was ill; January 29, 2007, because she was ill; and January 31 and February 1, 2007, because her son was ill. On February 5, 2007, the claimant left early because her son was ill and she was off for the same reason February 6 and 7, 2007. The claimant's son had bronchitis and pink eye for approximately the last three weeks of her employment. The child's father and grandmother watched him several days during that time period while the claimant worked but were not always able to do so and, consequently, the claimant had to call in on the days detailed above. The employer reviewed her attendance record and determined her absences were excessive and terminated her employment effective February 9, 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 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). While the claimant did have several absences, those absences were attributable to the illness of her child or herself, and the claimant did take reasonable steps to have back-up child care when her son was ill but her alternate child care could not cover a three-week period without help from the claimant. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The March 1, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw