

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRISHA RESENDIZ**  
Claimant

**APPEAL NO: 11A-UI-11556-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TMS MANAGEMENT GROUP INC**  
Employer

**OC: 07-24-11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 23, 2011, 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 October 18, 2011, and continued on October 20, 2011. The claimant participated in the hearing. Jenny Miller, Call Center Manager and Janice Eastman, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten 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 customer service representative for TMS Management Group from November 5, 2010 to February 4, 2011. On December 15, 2010, the claimant left early due to illness. She was tardy December 16, 2010, and was tardy for a mandatory pre-shift meeting December 17, 2010. She was absent due to illness December 23 and 28, 2010, and had surgery on her bladder in December 2010. She was absent due to illness January 6 and January 18, 2011. She was absent for a portion of the day due to illness January 25, 2011. On February 2, 2011, the claimant's two-year-old son started a three-day stay in the hospital due to asthma and the claimant was absent February 2, 2011. She provided doctor's excuses for her absences due to illness, including the final absence February 2, 2011. The claimant received a written warning for leaving early December 15, her incidents of tardiness December 16 and 17, and leaving early due to illness December 23, 2010 (Employer's Exhibit Seven); a written warning for her absence due to illness January 6, 2011 (Employer's Exhibit Eight); and a final written warning January 25, 2011, for a partial absence due to illness (Employer's Exhibit Nine). The employer terminated the claimant's employment effective February 4, 2011.

**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 a number of absences during her brief tenure with the employer, most of her absences were due to the properly reported absence due to illness of herself or her son. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Consequently, the administrative law judge must conclude the claimant's absences do not rise to the level of disqualifying job misconduct and benefits must be allowed.

**DECISION:**

The August 23, 2011, reference 01, decision is affirmed. 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/css

