

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVIN GEARY
Claimant

APPEAL NO: 14A-UI-03019-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

**OC: 11/03/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 13, 2014, reference 02, 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 April 10, 2014. The claimant did not respond to the hearing notice by providing a phone number where he could be reached at the date and time of the hearing as evidenced by the absence of his name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Rachel Ottens, Human Resources Administrator, 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 credit specialist for DM Services from September 6, 2011 to February 24, 2014. He was discharged for excessive absenteeism.

The employer's policy requires that employees' attendance remain at 85 percent or they will be placed on probation. Employees are provided with five temporary personal days per calendar year. The claimant was placed on a 90-day probationary period November 11, 2013 through February 9, 2014, because he was at or above 15 percent absenteeism and was told he could not exceed 15 percent during his probation.

On November 13, 19, 25, 27, 29, December 3, 11, 21 and 26, 2013, the claimant was absent due to properly reported illness; he left due to illness after working four minutes of his shift December 27, 2013; he was absent due to properly reported illness January 3, 2014; he was absent due to his mother's death January 10, 2014; he was absent due to his mother's funeral January 13, 2014; he was absent due to properly reported illness January 18, 2014, and used one-half of a day of temporary personal leave; he left after working two hours January 20, 2014,

and used one-half of a day of temporary personal leave; he was absent due to properly reported illness January 29 and 30, 2014, and used two full days of temporary personal leave to cover those absences. The claimant's probationary period ended February 11, 2014, but he was absent that day and February 13, 2014, and used his two remaining days of temporary personal leave; he was absent due to properly reported illness February 17, 20 and 21, 2014, and the employer terminated his employment February 24, 2014, for accumulating a percentage of 17.08 away from work. The employer held six follow-up meetings with the claimant while he was on probation apprising him of what his attendance percentage was.

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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

While the administrative law judge can understand the employer's frustration about the claimant's attendance record, and the employer did what it could to help the claimant try to improve his attendance, because the final absence, as well as nearly all of his absences, was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The March 13, 2014, reference 02, 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/pjs