

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-00607-ET
OC 12-14-03 R 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 12, 2004, 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 February 11, 2004. The claimant participated in the hearing with Local President Linda Shaffer. Diana Boyd, Customer Service Manager and Lucie Hengen, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 assistance agent for Qwest from November 3, 1997 to December 16, 2003. The claimant suffered from several serious medical conditions and had two major surgeries and consequently was absent from work approximately 198 days and tardy five times in 2003 (Employer's Exhibit Two). On November 14, 2003, the claimant received a "Reissue – Warning of Dismissal" due to her attendance and was notified that further absences or incidents of tardiness could result in termination of her employment (Employer's Exhibit One). On December 13, 2003, the claimant was one-half hour late. She had traded shifts with another employee but did not remember doing so until she was getting ready for work. The claimant called the employer and said she was going to be late and the employer sent the claimant's file to the area manager for review. The claimant had received several warnings about her attendance and the employer terminated her employment December 16, 2003.

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 was absent an extraordinary number of days in 2003, with the exception of the February 11 and December 13, 2003, incidents of tardiness, her absences were attributable to illness and properly reported. Although the employer's attendance policy appears more generous than that of many employers, and the claimant had received several warnings about her attendance, the only incidents in 2003 that could not be considered excused because of illness, were the tardy February 11, 2003, and the final tardy December 13, 2003. Because under Iowa law absences due to properly reported illnesses are effectively treated as if they did not occur, the administrative law judge cannot conclude that the claimant's two unexcused incidents of tardiness during 2003 were excessive. Consequently, benefits must be allowed.

DECISION:

The January 12, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf