

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIE WYATT
Claimant

APPEAL NO. 06A-UI-10613-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 09-24-06 R: 01
Claimant: Respondent (1)

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2006, 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 November 14, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing. Carolyn Cross, Personnel 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 production team member for Van Diest Supply Company from October 12, 2004 to September 29, 2006. The employer uses a no-fault attendance policy. Employees start with eight points at the time of hire and are terminated upon reaching zero points. If they are absent three or more consecutive days and bring a doctor's excuse, they are assessed two points for the entire absence. Employees may earn one-half point per month with perfect attendance. On October 21, 2004, the claimant was absent due to a family illness; on October 31, 2004, she was absent because of transportation problems; on January 6, 2005, she was absent due to illness; on January 7, 2005, she received one-half point for being late after her car windows were shot out; on January 27, 2005, she went home ill; on March 17, 2005, she was absent for personal business; on May 12, 2005, she left early to care for her mother after her house was burglarized; on May 23 through May 26, 2005, she was absent due to illness and received two points; on July 24, 2005, she was absent because of personal business; on August 26, 2005, she was absent due to family illness; on December 11, 2005, she was absent due to illness; on May 7, 2006, she was absent due to illness; and on July 20 and August 28, 2006, she was absent due to personal business. On September 29, 2006, the claimant was called to take her daughter to the hospital and was assessed one point causing her point total to drop to zero and her employment was terminated. The claimant received a written warning March 18, 2005, when she reached four points; May 8, 2006, when she reached two and one-half points; and July 21, 2006, when she reached two points.

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). Ten of the claimant's 17 overall points in nearly two years were accumulated due to the illness of herself or immediate family members and those absences cannot be held against her in the context of considering her absences excessive or unexcused for the purposes of unemployment insurance benefits. Additionally, the claimant's last absence was the result of having to take her daughter to the hospital, an event over which she had no control and should not be penalized. Because the final absence was related to the properly reported illness of the claimant's daughter, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 26, 2006, 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