

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOEL GOLDSBERRY**  
Claimant

**APPEAL NO: 17A-UI-02265-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GO DADDY SOFTWARE INC**  
Employer

**OC: 01/29/17**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 16, 2017, 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 23, 2017. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Katherine Castillo, Employee Relations Specialist, 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 inbound sales consultant for Go Daddy Software from July 17, 2016 to December 15, 2016. He was discharged for violating the employer's attendance policy.

The employer uses a no-fault attendance policy. Employees are allowed two personal days and earn 1.86 hours of sick leave per pay period. Employees receive a final written warning if they accumulate more absences than they have time to cover.

On October 29, 2016, the claimant received a final written warning because he had used his two personal days and the approximately 11 hours of sick leave he had accumulated. He was absent due to properly reported illness December 10, 2016, and when he contacted his supervisor to notify him he would be absent due to illness and had a doctor's note he was told he was on a final written warning and any absence would lead to termination. The claimant then stated in that case he would not be returning. The employer considers him to have voluntarily quit by abandoning his job.

## 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 § 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.

Iowa Admin. Code r. 871-24.32(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.

While the employer maintains the claimant voluntarily quit by abandoning his job, the evidence establishes the claimant was effectively told he was going to be terminated when he called in to report he would be absent December 10, 2016, and that he had a doctor's note, and that prompted the claimant to state he would not be returning. If the situation is such that the claimant will be terminated if he does not quit, that separation is considered a discharge from employment. Those were the circumstances of the present case. Consequently, it will be analyzed as a termination from employment.

The claimant had used his two personal days and approximately 11 hours of sick leave by October 29, 2016, and the employer issued him a final written warning for his absence due to properly reported illness on that date. The claimant did not have another absence until December 10, 2016, at which time he was absent due to illness and properly reported his absence.

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.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The February 16, 2017, 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/rvs