

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

KIMBERLY A CURRIE  
14264 – 65<sup>TH</sup> AVE  
INDIANOLA IA 50125

TAYLOR RECYCLING FACILITY OF IOWA  
LLC  
ATTN – MS G COVERDELL  
1422 SCOTT AVE  
DES MOINES IA 50317

Appeal Number: 06A-UI-02943-H2T  
OC: 01-29-06 R: 02  
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.

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(Administrative Law Judge)

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(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 March 1, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2006. The claimant did participate along with her witness, husband, Todd Currie. The employer did participate through Graham Coverdell, Administrative Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a scale coordinator full time beginning February 15, 2005 through November 1, 2005, when she was discharged. The claimant was sick and was hospitalized

from October 24 through October 31. She called the employer on October 24 from the emergency room and left a message for Ms. Coverdell, indicating she was about to be hospitalized and would not be able to report for work. The claimant's husband went to the employer's place of business on a daily basis from October 24 through October 31 and informed the employer that his wife was still sick, unable to call for herself, and still hospitalized. The claimant returned to work on November 1, 2005, at which time she provided Ms. Coverdell with a note indicating that she had been hospitalized from October 24 through October 31 but that she was now released to return to work without any restrictions. The claimant was then told by Ms. Coverdell that she was discharged. Initially, Ms. Coverdell told her she was discharged for failing to call in to notify the employer of her absence. When the claimant argued with Ms. Coverdell and told her that she had a cell phone bill that would verify her call in, Ms. Coverdell changed her reason for discharge to indicate that she needed someone more reliable than the claimant to work for her. The only reason the claimant was absent from work was due to illness that required her hospitalization. The claimant had no previous warnings or discipline of any kind.

#### 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).

Because the final absence for which she was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. The employer was kept apprised of the claimant's inability to work due to illness by the claimant's husband. The doctor's note the claimant presented to the employer when she returned to work clearly indicated that she had been hospitalized during the time she was absent. The testimony of Ms. Coverdell is not as persuasive as that of the claimant and her corroborating witness. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 1, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw