

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA FREEL
Claimant

APPEAL NO: 13A-UI-01152-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 10/21/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 29, 2013, reference 05, 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 27, 2013. The claimant participated in the hearing. Amy MacGregor, Human Resources 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 administrative assistant for MarketLink from November 12, 2012 to December 17, 2012. She was discharged for excessive absenteeism.

The claimant worked 1.5 hours November 16, 2012, and then went home due to illness. On November 23, 2012, the claimant was absent due to properly reported illness. On November 26, 2012, the employer issued the claimant a documented verbal warning for attendance. On November 28, 2012, the claimant left at 12:30 p.m. for a doctor's appointment. On the evening of December 11, 2012, the claimant's brother suffered a massive stroke. She called the employer and reported she would be absent December 12, 13 and 14, 2012, because of her brother's critical condition and the fact she was his lone family member and power of attorney for healthcare. On Monday, December 17, 2012, the claimant called the employer to report she would not be in that day and her supervisor pressed her on when she would be returning to work. The claimant could not give a date certain because of the nature of her brother's condition as she had been told by his doctors it was a minute by minute situation. Because the claimant could not commit to a return date the employer terminated her employment December 17, 2012. Her brother passed away December 21, 2012.

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).

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. 871 IAC 24.32(7). In this case, while the claimant did accumulate three absences due to illness within the first 13 days of her tenure with the employer, her absences were properly reported as she suffers from Crohn's Disease. The final four absences were the result of her brother's massive stroke and the fact she was his sole surviving family member and his power of attorney for healthcare. Although the administrative law judge recognizes the employer's need to have employees maintain good attendance, the claimant did not have any control over her brother's medical condition and effectively had no choice but to be with him at the hospital. That is reasonable grounds for absenteeism even though the claimant was a new employee and had not established a good attendance history with the company to date. Under these circumstances, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The January 29, 2013, reference 05, decision is reversed. 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/css