

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMEKA M ALEXANDER
Claimant

APPEAL NO: 17A-UI-10845-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDEX GROUND PACKAGE SYSTEM INC
Employer

OC: 10/01/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 20, 2017, 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 November 9, 2017. The claimant participated in the hearing. Melissa Ford, Area 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 part-time package handler for FedEx Ground Package System from June 23, 2016 to October 3, 2017. She was discharged for attendance issues.

The employer has a no-fault attendance policy and employees can be discharged if they are absent more than three times during a rolling 30 day period. Absences include incidents of tardiness.

The claimant was scheduled to work from 3:45 a.m. to 8:00 a.m. She was absent due to properly reported illness September 9, September 19, September 22 and September 27, 2017. On September 21, 2017, the claimant reported she would be late for work and arrived at 5:21 a.m. On September 23, 2017, she reported she would be late for work and arrived at 5:28 a.m. On September 29, 2017, the claimant reported she would be late for work and arrived at 4:11 a.m. because she forgot her medication. The claimant suffers from severe mental illness and must take her medication.

The employer issued the claimant a verbal warning in writing September 23, 2017, and a final written warning September 29, 2017, before notifying her it was terminating her employment October 3, 2017.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

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.

While the claimant exceeded the allowed number of attendance occurrences, her absences and incidents of tardiness were due to illness and her medical condition. 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 October 20, 2017, reference 01, 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/rvs