

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RITA MOORE**  
Claimant

**APPEAL NO. 08A-UI-07382-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NSK CORPORATION**  
Employer

**OC: 07-13-08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 5, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2008. The claimant participated in the hearing. Lynda Swanson, Human Resources Senior Administrator and Mike Allbaugh, Business Unit 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 machine operator for NSK Corporation from August 15, 2005 to July 14, 2008. The claimant's last day worked was June 16, 2008, because her husband was having heart surgery June 17, 2008. She went to the office to get the FMLA paperwork and took it to Lincoln with her and gave it to the doctor. It was due July 1, 2008. The doctor's assistant said the paperwork would be faxed back to the employer but the employer never received the documentation. The claimant learned it was lost July 7, 2008, and believed there may have been some confusion because her husband also had shoulder surgery. The claimant contacted her husband's physician about the paperwork July 7, 2008. The doctor returned her call July 8, 2008, and said new paperwork would be faxed after the employer faxed a new copy of the paperwork to the doctor. The employer had not received the paperwork by July 9, 2008. Although the claimant met the criteria for FMLA she missed the deadline and consequently her employment was terminated July 14, 2008.

**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). The claimant received the FMLA paperwork from the employer and gave it to her husband's physician. She reasonably believed the doctor completed the paperwork and returned it to the employer and did not learn that was not the case until July 7, 2008. She did not intentionally fail to return the FMLA paperwork in a timely manner and was not aware the paperwork was late or her job was in jeopardy until July 7, 2008, at which time it was too late and the employer terminated her employment. Because the claimant's final absence was related to an FMLA situation and the fact the paperwork was not returned within the time limit was not the claimant's fault, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The August 5, 2008, 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/css