

**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**

**ANNETTE STARLIPER
2100 EVERGREEN AVENUE
APARTMENT #24
DES MOINES IA 50320**

**PETSMART INC
c/o SHEAKLEY UNISERVICE &
ASSOCIATES
P O BOX 84
PHOENIX AZ 85001-0084**

**Appeal Number: 04A-UI-04449-ET
OC 05-04-03 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.

(Administrative Law Judge)

(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 April 8, 2004, reference 08, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 12, 2004. The claimant participated in the hearing. Mark Rath, Store Manager, and Mara Smith, Employer Representative, participated in the hearing on behalf of the employer.

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 pet stylist assistant for Petsmart from March 10, 2003 to

February 23, 2004. The claimant was involved in an automobile accident August 9, 2003, and was able to work intermittently following the accident but the last day she actually performed work for the employer was October 9, 2003. On October 20, 2003, the claimant provided a doctor's note restricting her from doing anything of a weight-bearing nature on her foot and the employer was willing to accommodate her restrictions. The claimant called in and spoke to Sara, the assistant manager, and kept her informed of her medical condition and when she expected she might be able to return. The claimant did not contact the employer after December 2003 and on February 12, 2004, the employer sent the claimant a letter stating the last physician's statement it received was October 20, 2003, and if she were unable to report to work by February 23, 2004, the employer would proceed to terminate her employment. On February 20, 2004, the claimant provided the employer with a doctor's note excusing her from work following a surgical procedure. The doctor's excuse stated the usual recovery time for that surgery was four to six weeks and she might need to be out of work the entire time for recovery. The claimant also left her attorney's card and stated if the employer wished to discuss the situation further it needed to contact her attorney. On February 23, 2004, the employer sent the claimant a letter stating her employment was terminated because she was not able to return to work February 23, 2004. The claimant was released to return to work without restrictions March 22, 2004.

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). Although the claimant was absent several months due to a non-work related accident, she did respond to the employer's February 12, 2004, letter with a doctor's excuse dated February 20, 2004, stating she had surgery February 19, 2004, and the usual recovery time for that surgery was four to six weeks. The claimant testified she maintained contact with the employer and while she did not communicate with the employer as often as she should have, she did respond when the employer sent the letter and updated her information at that time. Consequently, because the

final absence for which the claimant was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The April 8, 2004, reference 08, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/s