

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

CALEB L CRAWFORD
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ROCK ISLAND IL 61201

APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09259-LT
OC: 07-25-04 R: 12
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
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 11, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 21, 2004. Claimant did participate. Employer did participate through Turkessa Hill and was represented by Jackie Wiegand of Talx UC Express. Department's Exhibit D-1 was received. Employer's Exhibits One through Four were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant obtained a mailing address for the Appeals Section from a local office representative as 100 East Grand Avenue in Des Moines. He mailed the appeal on August 19 and it was

returned as undeliverable. He then called again and determined that the proper address is 1000 East Grand Avenue. He included the original postmarked envelope in his appeal.

Claimant was employed as a full-time customer service representative through July 26, 2004 when he was discharged. On Thursday, July 22, claimant reported to work and an hour later his mother called and told him his sister (15 months) was having swelling complications after surgery for her glaucoma. Claimant's mother does not drive and his father is disabled so they could not drive her there. Claimant went to a supervisor, Aaron Brown, and told him that he had a family emergency. Brown reminded claimant of his attendance point status and told him, "a man's gotta do what a man has got to do". Brown did not participate in the hearing. Claimant's supervisor, Heath, was not at work that day. Claimant returned to work the next scheduled workday and explained the emergency and offered documentation, which was refused.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

The claimant filed an appeal in a timely manner but it was not received because he received erroneous information from the local office. Immediately upon the returned appeal letter, the appropriate address was obtained and the appeal was filed for a second time. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant was discharged due to job related misconduct. The administrative law judge concludes that he was not.

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). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a

sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. Schmitz v. IDHS, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code Section 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. Schmitz, 461 N.W.2d at 608.

Where employer's hearsay allegations conflict with claimant's direct testimony, claimant's version of the events is credible. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence was related to an emergency medical complication after surgery of a very young child, for which no alternate transportation was available, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The August 11, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc