IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BETH A STONE Claimant **AT&T MOBILITY SERVICES LLC** Employer	**APPEAL 19A-UI-02152-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/17/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 6, 2019, (reference 01) representative decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 27, 2019. Claimant participated. Employer participated through Melissa Miller, Attendance Manager and was represented by Tanis Burrell of Talx UC Express. Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged due to job misconduct sufficient to disqualify her from unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative beginning on March 22, 2016 through February 19, 2019, when she was discharged. Claimant was discharged for excessive absenteeism. Claimant suffers from post-traumatic stress disorder for which she was granted FMLA. She sought additional accommodations under the ADA that were eventually denied by the employer. In her last seven months of employment the claimant had twenty-three instances of absenteeism, twenty-one of which were properly reported absences due to illness.

The only two instances that were not due to properly reported illness were January 25 and January 26 2019. The claimant had asked for vacation for both days, but for some reason they were not correctly noted on the system. Claimant had vacation time available for her use on both days. For some reason on January 26, the automated system counted claimant as being a no-call/no-show for two hours, but she was given vacation for 8 hours. As claimant's shifts were ten hours, it is clear that there was just an error in allocating vacation to an employee with a ten hour work shift. The same is true of January 25. Claimant made her vacation request for January 25 in November 2018 when vacation bids opened, but for some reason it was not recorded correctly by the automated system. Under the employer's policy, an employee must

have three incidents of no-call/no show in order to be considered a voluntary quit. Claimant, at most had two incidents of no-call/no-show.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The vast majority of the claimant's absences for which she was discharged were due to properly reported absences due to illness. Only the last two incidents were due to some sort of a glitch where the claimant believed she was approved for vacation for her entire shift. The administrative law judge concludes that the absences due to her properly reported illness cannot be considered. Thus, we are left with two absences in a seven month period. Two

absences in a seven month period are not considered excessive for the purposes of unemployment insurance benefits. Benefits are allowed.

DECISION:

The March 6, 2019, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/rvs