

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI KRESSPLETT
Claimant

APPEAL NO. 07A-UI-06268-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATIONS DATA SERVICE INC
Employer

OC: 05-27-07 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 23, 2007. The claimant participated in the hearing. Phyllis Kotschot, Human Resources Manager and Doris Keldgord, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 inserter/machine operator for Communications Data Service from June 1, 2006 to May 29, 2007. The employer's attendance policy states, "Absences of more than 80 hours, during the previous 365 days, are considered excessive and may initiate the corrective action process..." (Employer's Exhibit One). The claimant's mother was diagnosed with a rare liver cancer in March 2007. Treatments started March 12, 2007, in Philadelphia. The claimant spoke to the employer about the situation and was told to write down the dates she would have to go back to Philadelphia and they would be excused. On April 19, 2007, the employer issued the claimant an "FYI" reminder stating she had 72.25 hours of unexcused absenteeism since her hire date (Employer's Exhibit One). On May 3, 2007, the claimant received a verbal warning in writing stating she had 80.25 hours of unexcused absenteeism not counting the 59.25 hours she had been excused (Employer's Exhibit One). On May 10, 2007, the employer met with the claimant about her absenteeism and "future at CDS" (Employer's Exhibit One). The employer notified the claimant that further unexcused absences could result in termination of her employment and recommended she voluntarily terminate her employment so she would be eligible for rehire (Employer's Exhibit One). The claimant indicated she would consider it but was not ready to make that decision yet. On May 10, 2007, the employer terminated the claimant's employment because she had 40 additional hours of unexcused absenteeism due to family illness since May 10, 2007 (Employer's Exhibit One).

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's mother has a rare form of liver cancer and the claimant needed to accompany her to her treatment in Philadelphia. The claimant did not qualify for FMLA because she had not worked for the employer for one year. Her absences, however, were due to "illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7). Under these circumstances the administrative law judge concludes the claimant's absences were due to the reasonable grounds of caring for her severely ill mother and were properly reported as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 18, 2007, reference 01, decision is affirmed. 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/css