

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSI R TELFORD

Claimant

APPEAL NO. 08A-UI-03147-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAR-FRESHNER CORP

Employer

**OC: 03/02/08 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelsi Telford filed an appeal from a representative's decision dated March 21, 2008, reference 02, which denied benefits based on her separation from Car-Freshner Corporation. After due notice was issued, a hearing was held by telephone on April 14, 2008. Ms. Telford participated personally and Exhibit A was admitted on her behalf. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Telford was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Telford began working for Car-Freshner Corporation on August 16, 2007. She worked approximately 20 hours each week as a labeler. Her last day at work was January 19, 2008. She gave the employer notice that she was undergoing gall bladder surgery on February 1, 2008. Her doctor provided a statement that she would need to be off work for two to four weeks following the surgery.

The employer notified Ms. Telford in a letter dated February 12 that her job could not be held open for her. The letter advised that she was being discharged effective immediately but could reapply for work once she was released by her doctor. Ms. Telford's doctor did not release her for work until March 1, 2008. She has not sought a return to work with Car-Freshner Corporation.

REASONING AND CONCLUSIONS OF LAW:

Ms. Telford left her employment in order to undergo surgery and immediately made the employer aware of the need to be absent. However, she was discharged before she had an opportunity to recover from her condition and re-offer her services to the employer. Because the employer severed the employment relationship before Ms. Telford could recover from

having gall bladder surgery, the provisions of Iowa Code section 96.5(1)d are not applicable to this case.

In those cases where the employer initiates the separation from employment, the separation is considered a discharge. An individual who was discharged from employment is only disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). According to the employer's letter of February 12, Ms. Telford was discharged because the employer could no longer hold her job open for her. Her absences beginning February 1, 2008 were for medical reasons and were properly reported to the employer. The employer did not participate in the hearing to offer testimony concerning absences prior to the surgery and there is no basis in the record for concluding that they were unexcused. Therefore, the absences that prompted the discharge were all excused absences.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Inasmuch as there was no other reason for Ms. Telford's discharge, no disqualification is imposed.

DECISION:

The representative's decision dated March 21, 2008, reference 02, is hereby reversed. Ms. Telford was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css