

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA WICK
Claimant

APPEAL NO. 10A-UI-08743-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

OC: 05-16-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 11, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 5, 2010. The claimant participated in the hearing. Julie Montgomery, Human Resources Assistant, and Jim Murray, Plant Manager, participated in the hearing on behalf of the employer.

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 machine operator for The American Bottling Company from June 9, 1999 to May 17, 2010.

The employer uses a no-fault attendance policy. Employees receive one-half point for an incident of tardiness of less than two hours or forgetting to clock in or out and one point for a full day absence. If an employee is absent for consecutive days due to illness and provides a doctor's excuse, she is assessed one point for the entire absence. Four occurrences in a rolling 12-month period results in a written warning; five occurrences in a rolling 12-month period results in a second written warning; and six occurrences in a rolling 12-month period results in termination. The claimant called in May 10, 11, and 12, 2010, and reported she was ill and would not be in. She went to work May 13, 2010, and worked for three hours before notifying her supervisor she did not feel well and was going to leave. She got her uniforms and took them to Plant Manager Jim Murray's office. She told him she knew she exceeded the allowed number of attendance points and was turning in her uniforms. Mr. Murray explained she had options, such as going to her doctor and getting a note excusing her from work the days she was absent so she would receive one point instead of four points. He also told her to consider taking FMLA leave, but she declined because she did not want to use her vacation in that manner and she believed she would be able to obtain a doctor's excuse for her absence.

The claimant was not scheduled to work May 14, 2010. She went in to see her doctor; but, instead of her regular doctor, she met with a different doctor in the practice whom she had never met before. He told her she was depressed and prescribed medication for her to take to help with the illness. The doctor wrote her a note but only excused her for May 14, 2010, telling her it was illegal for him to backdate a note although her regular doctor had done so in the past when it was clear she had been ill. She took the doctor's excuse to the employer on her next scheduled day of work, which was May 17, 2010. After reviewing the note, the human resources department terminated the claimant's employment for violating its attendance policy.

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). While the claimant violated the employer's attendance policy, her last absences were due to properly reported illness. She went to the doctor May 14, 2010, expecting to be able to secure a note excusing her absences May 10 through 13, 2010, and was diagnosed with depression by the doctor filling in for her family doctor. Although her family doctor wrote notes covering her absences from days previous to the one he saw her on, the unfamiliar doctor she saw May 14, 2010, declined to do so. Because the final absence was related to properly reported illness, however, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The June 11, 2010, reference 02, decision is reversed. 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/kjw