

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

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Appeal Number: 04A-UI-02491-LT
OC 02-01-04 R 02
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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 24, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 30, 2004. Claimant did participate. Mary Ann Towsley was not prepared to participate when the hearing was called and opted not to participate in the hearing and did not offer another witness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time marketing coordinator through February 11, 2004 when she was forced to resign. Her last day worked was January 26, 2004. On January 25, claimant was physically attacked by her father, which resulted in two black eyes and a broken nose. Both

ended up being jailed as participants to the physical altercation as is the apparent policy in a domestic dispute. Claimant left a voice mail for Mary Ann Towsley on January 25 and let her know what was going on. On January 26, claimant was released and spoke with Towsley personally and she assured claimant she would notify claimant's supervisor and approved the absence. On January 26, claimant also called her supervisor, Cheryl Goode, and said she could not report because of her injuries and that she had to find a place to live and Goode was not pleased, but said okay. On January 27, Towsley called claimant and told her not to report to work because Goode was trying to fire her. Towsley said she could quit and file for unemployment and she would not protest it. Towsley called claimant back a short time later and instructed claimant to give her two weeks' notice immediately. Claimant stayed with Robin Landers that night and heard the next phone call between claimant and Towsley. Towsley was upset that claimant was absent as a result of the physical attack and told her she must submit her resignation.

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 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).

A forced resignation is not a voluntary leaving of employment, but a discharge from employment. The question then is whether the discharge was for reasons related to job misconduct. It was not. Claimant was physically assaulted regardless of whether her attacker was her father or a stranger on the street. The reported absences related to the physical assault are all excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absences for which she was discharged were related to properly reported physical battery (two black eyes and a broken nose), no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The February 24, 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/kjf