

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

TAVIA O TATE
5422 N LINWOOD
DAVENPORT IA 52806

APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-03651-LT
OC: 03-06-05 R: 04
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)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 30, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 28, 2005. Claimant did participate. Employer did participate through Turkessa Hill and April Vogt and was represented by Michael Sloan of TALX UC eXpress.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time telephone sales representative (TSR) through March 1, 2005 when she was discharged. Claimant was seen in the hospital emergency department on February 14 and her two children were treated in the emergency room on April 21, 2005. Her nine-year-old

son was not allowed at school while ill with a virus. Claimant requested and obtained a medical leave of absence for herself and her minor children beginning January 7 and the leave was extended again on February 14, 2005 with no specified end date. Claimant's husband picked up the documents for claimant to sign and did not advise employer of an end date. Claimant signed and returned the form which employer altered after claimant's signature to show an end date of Thursday, February 24. Employer did not give claimant a copy of the leave of absence form nor did it provide a copy for the hearing. Employer called claimant in to work on February 25 even though she was not scheduled to work. Without telling claimant she was expected back at work on February 28, employer last counted her absent due to a lack of childcare.

Claimant was absent on January 5 and 6 due to her four-year-old son's illness related to chronic asthma. On December 28 claimant missed work due to her own illness. On December 22 she had to take her asthmatic child to the clinic, which was not open outside of claimant's work hours. Employer did not count her absence on January 12 for claimant's illness and because the sitter would not care for her ill son. Multiple childcare providers would not care for her asthmatic son while he was ill.

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). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

Reported absences related to illness are 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. Because claimant was still on an approved leave of absence without notice of an end date, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The March 30, 2005, 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/pjs