

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: 06A-UI-06587-LT
OC: 05-28-06 R: 01
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
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 16, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 17, 2006. Claimant participated. Employer participated through Karen Davis and Trina Wingert and was represented by Nancy Beals of Employers Unity. The issue is whether claimant quit the employment without good cause attributable to the employer or was discharged for reasons related to job misconduct. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time customer service representative (CSR) through January 31, 2006 when she was discharged. Employer directed claimant to obtain medical information from Hospice about her care for her father during his terminal illness by the close of business on January 31, 2006. Claimant intended to obtain the information from the nurse at Hospice the evening of January 30 and return to work by 9:30 a.m. on January 31 as directed but broke her nose on January 30. She was not discharged from the hospital until 6 p.m. on January 30 so she was left with no time to get the paperwork from the hospice nurse that evening. Claimant was medically excused from work for one week. She attempted to call her immediate supervisor Trina Wingert on January 25 after the receipt of the January 24 letter and again on January 30 after she broke her nose. In her testimony, Wingert did not recall either receiving or not receiving claimant's messages and, in any event, did not return claimant's calls. When she called Jen since Trina was not answering calls or returning messages, Jen told claimant her desk was cleaned out.

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 § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant's repeated attempts to reach Wingert to communicate her current circumstances was evidence of an intention to continue working. Thus, the separation was a discharge.

Iowa Code § 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is 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. Claimant reasonably attempted to notify employer of her broken nose and medical orders to be off work for one week by calling and leaving multiple messages for Wingert. This placed the burden back on Wingert to return the calls since she was not making herself available to claimant for communication. Since Wingert did not return claimant's calls and claimant was notified her desk was cleaned out, she was reasonable in her belief she was discharged. Because the final absence for which she was discharged was related to properly reported injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The June 16, 2006, 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