

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENICE MITCHELL
Claimant

APPEAL NO: 12A-UI-03984-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWES HOME CENTERS INC
Employer

OC: 03-04-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 3, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 2, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 part-time cashier for Lowe's from August 22, 2009 to March 6, 2012. The claimant was diagnosed with kidney, pancreas, and liver failure and was absent with the consent of the employer October, November, and December 2011. After returning from that leave, the claimant was absent approximately three times between January 1, 2012 and the end of February 2012. Following her last absence, the employer placed her on administrative leave and notified her on March 6, 2012, that her employment was terminated for excessive unexcused absenteeism. The employer uses a point-based system and the claimant believes employees are allowed seven points. The employer excuses absences accompanied by a doctor's note but considers absences due to illness without a doctor's note to be unexcused. All of the claimant's absences were due to illness and properly reported. The claimant's physician is located one hour away from her home and she was unable to see her doctor every time she was ill. The claimant never received a verbal or written warning about her attendance.

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). The claimant was diagnosed with a serious illness and was absent on three occasions between January 1, 2012 and the end of February 2012. All of her absences were due to properly reported illness and three absences, given the claimant's medical condition, are not considered excessive. Additionally, the claimant was never warned about her attendance and, consequently, did not know her job was in jeopardy. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The April 3, 2012, reference 01, 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