

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JONATHAN P MCGARR
Claimant

APPEAL NO: 20A-UI-00881-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

OC: 12/29/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 22, 2020, 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 February 14, 2020. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

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 customer service representative III for Mediacom Communications from June 20, 2012 to December 19, 2019. He was discharged for absences due to illness.

The claimant's absence began May 31, 2019, when he was off work helping care for his father because he had his leg amputated. His mother was also ill and hospitalized for a period of time. The claimant's grandfather lives with the family and the claimant was needed to care for him while his mother and father recuperated. The claimant applied for FMLA to care for his father but was denied.

In mid-September 2019 the claimant was preparing to return to work when he began experiencing severe panic attacks. Initially he attributed the way he was feeling to his insomnia, depression and anxiety but was then diagnosed with panic attacks. His doctor prescribed medication but told him it could take at least one month before he felt its effects. After one month he was not feeling better so his physician increased his dosage. In September 2019 he spoke with human resources and told it he was applying for FMLA again for his own illness.

Originally the claimant called in to his supervisor everyday but as time passed his supervisor suggested he call once a week and then once a month to report his absences and the claimant

did so. The claimant was told that he was required to report his absence at the beginning of the month until he returned to work at which time he would again be expected to report his absences daily.

The claimant was released to return to work December 10, 2019. He drove to the employer's parking lot and had a panic attack and returned home without going in to work. That situation occurred several times over the following week and on December 19, 2019, the employer notified him by letter his employment was terminated.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant was told to report his absences monthly until he returned to work. He notified his supervisor at the beginning of December 2019, he would not be in until further notice. While the claimant was released to return to work December 10, 2019, and tried to go back, he experienced panic attacks in the parking lot and returned home without going in the employer's premises. Although the claimant had the desire to return to work and pushed his doctor for a release, he was still having panic attacks which prevented him from working and could not see his doctor between December 10 and December 19, 2019, when he was notified of his termination.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The January 22, 2020, 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/scn