

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRGINIA L. HEISING
Claimant

APPEAL NO: 17A-UI-06983-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

OC: 06/11/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 7, 2017, 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 July 27, 2017. The claimant participated in the hearing. The employer sent a fax prior to the hearing indicating it was not participating in the hearing and did not contest the claimant's claim for unemployment insurance benefits.

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 sales representative for Mediacom Communications from October 29, 2001 to June 9, 2017. She was discharged for attendance issues.

The claimant suffers from anxiety and was on intermittent FMLA over the last two years of her employment. The employer requires employees to use their vacation and flex time when on FMLA and if the employee does not have enough time to cover an FMLA absence, the employer considers it unacceptable and a violation of the attendance policy.

Over the last few months of the claimant's employment she did not have vacation or flex time except for the small amounts she earned between absences. The claimant's husband, who is diabetic, was diagnosed with high blood pressure that his physician was having a difficult time controlling with medication. Consequently, the claimant would need to stay home with him, on his doctor's recommendation, on occasion during the last few months of her employment. During the last four to five months of the claimant's employment she missed approximately 14 to 16 days. Each absence was properly reported and due to her own illness or that of her husband. Absences accompanied by a doctor's note were still considered unexcused and as a result the claimant did not provide medical excuses to the employer. Over the last four to five months of her employment the claimant received a verbal warning, a written warning, and a final

written warning before the termination. The claimant was absent without vacation or flex time June 2, 2017, due to her medical condition for which she was still covered by FMLA. On June 9, 2017, the employer notified the claimant it was terminating her employment for attendance. The claimant was very surprised by the employer's actions due to the length of time she worked for the employer and the fact she was one of the employer's top sales representatives. She asked for another chance because it was her understanding other employees had received several final written warnings before termination but the employer denied her request.

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.

Because the claimant was on intermittent FMLA, she exhausted her vacation and flex time on several occasions and would be forced to take unpaid time off which the employer considered a violation of its attendance policy, even though absences covered by FMLA are not to be considered unexcused. All of the claimant's absences were related to her own illness or her husband's illness and were properly reported. The employer did not accept doctor's notes so although the claimant could have provided medical excuses to the employer she did not do so because it did not make a difference in how the employer assessed an absence.

Under these circumstances, the administrative law judge concludes that 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 July 7, 2017, 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