BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

TAZMANIA N CLAYBURN Claimant, and GOLDEN CIRCLE BUSINESS SOLUTIONS INC Employer.	:	HEARING NUMBER: 08B-UI-05293 EMPLOYMENT APPEAL BOARD DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5(2)a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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John A. Peno

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board member that the administrative law judge's decision should be affirmed; however, I would also comment that while the claimant failed to participate in the hearing and testimony and evidence appear to prove excessive absences, the employer did a poor job of presenting their case. For this reason, I am compelled to grant benefits because the employer failed to satisfy their burden of proof.

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Monique F. Kuester

AMG/ss

DISSENTING OPINION OF ELIZABETH L. SEISER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge as follows:

FINDINGS OF FACT:

The Claimant, a very short-term employee, worked for Golden Circle Business Solutions (doing business as Porticohr) for only eight months (March 28, 2007 - November 26, 2007). The Employer, a temporary employment agency, assigned the claimant to Principal Financial Group for the whole of her employment. On several occasions, Principal asked the Employer to counsel the Claimant about her attendance, particularly unplanned absences, as the Claimant incurred several unplanned absences during her brief employment. (Transcript, pp. 4– 5) Some of her reported absences were due to family illness, such as a head injury sustained by her child on 5/3/07, a broken elbow sustained by her boyfriend on 5/11/07, her mother's hospitalization on 5/21/07. There were other absences due to illness or personal reasons. These absences were properly reported in compliance with the Employer's attendance policy, which required the Claimant to call-in prior to her 8:00 am shift. The Claimant received the Employer's attendance policy and signed an acknowledgment of receipt on March 26, 2007. The call-in policy was contained in the section entitled Attendance Policy. (Tr. 3, Exhibit 2, unnumbered pp. 31 & 35)

On May 29, 2007, however, the Employer received an e-mail that the Claimant had been a no-call, no-show the prior Friday. (Tr. 6) The Employer warned the claimant that her attendance and failure to follow proper reporting procedures was a problem, both verbally and in writing via email. The Employer notified the Claimant that her assignment was in jeopardy. (Tr. 4-5)

In addition to these issues, there were two documented instances where the Claimant violated Principal's email policy. (Tr. 5, Exhibit 2, unnumbered pp. 22 & 24) The first incident occurred May 10, 2007 when the Claimant sent and received personal e-mail while at work in violation of the

Employer's e-mail policy for which the Claimant was disciplined. (Exhibit 2, unnumbered p. 26) On October 29, 2007, the Claimant was counseled again because she sent an inappropriate e-mail to a co-worker. The co-worker printed the e-mail then left a copy in the copier. The copy was intercepted by another employee who was offended and this triggered a "chain reaction of events" in the workplace. (Exhibit 2, unnumbered p. 24)

The final incident that prompted discharge was the Claimant's second no call/no show on November 25, 2007. (Tr. 2-3) This incident, just one month after the second e-mail violation on October 29, was the last straw. The Claimant was discharged the next day.

The Claimant did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

Because the Claimant failed to participate in the hearing, the Employer's testimony as to the events leading to her discharge is completely unrefuted.

The Claimant was a very short-term employee who worked less than eight months. In that brief time, she missed work several times for personal reasons, family reasons, or illness. The Claimant demonstrated familiarity with the Employer's call-in policy on several occasions. Nonetheless, on two occasions she failed to come to work and failed to properly report that she would be absent. While properly reported absences due to illness are excused, the Claimant's absences for purely personal reasons are not excused, and considered misconduct. See, Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The second no-call no-show occurred after she had been warned verbally and in writing that her job was in jeopardy. This was the final incident that triggered her timely discharge the next day. This record establishes not only that the Claimant had excessive absences and two no call/no shows, but that that she also violated the Employer's e-mail policy on two occasions. The Claimant's continued behavior in light of past warnings can only be characterized as a blatant disregard for the Employer's interests. The court in Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) held that an employee's continued failure to follow reasonable instructions is misconduct.

The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For all the foregoing reasons, I would conclude that the Employer satisfied their burden of proof. Benefits should be denied until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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Elizabeth L. Seiser

AMG/ss