

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BECCA R DAVIDSON**  
Claimant

**APPEAL NO: 12A-UI-13308-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDS GLOBAL INC**  
Employer

**OC: 10/07/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 31, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Linda Burns, Paula Slagle and Shannon Parrish appeared on the employer's behalf. During the hearing Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant in October 2011 to work as a part-time customer service representative who answered inbound calls from the employer's subscriber's clients. Before the claimant accepted employment, she informed the employer about her heart condition. The claimant understood the employer would work with her if she was absent for medical reasons.

On October 19, 2011, the claimant received a copy of the employer's attendance policy. The policy informs employees they must work as scheduled. Also, the employer may start disciplinary action if an employee's absence becomes a burden to other employees and affects an employee's job performance. (Employer Exhibits Three and Four.)

During her employment, the employer gave the claimant written warnings on March 23 and August 21, 2012 for on-going attendance issues. (Employer Exhibits One and Two.) After the March 23 written warning, the claimant missed 0.75 hours on April 12, 6.5 hours on May 1 for illness and 6 hours on August 20 for a reported illness. (Employer Exhibit Two.) The August 21 written warning was the claimant's second and final written warning for excessive absenteeism. Between October 31, 2011, and August 21, 2012, the claimant had missed 71 hours of scheduled work. With the exception of one time on April 12, the employer recorded the claimant was absent because of illness.

On October 9, the claimant asked Slagle, her supervisor, if she could leave work early. Slagle told the claimant that if she needed to leave she could, but her absence would not be excused because the employer needed her at work. The claimant did not feel well. Even though the claimant started experiencing symptoms that are associated with her heart condition the night before, she reported to work. When the claimant has issues with her heart, her fingers and hands become numb and she has difficulty breathing. The claimant began to feel increasingly ill at work and decided to leave so her symptoms did not become worse. She missed 3.5 hours of her scheduled shift on October 9. While the claimant could have provided a doctor's statement on days she reported she was ill, the employer did not ask her for any doctor's statement. Even if the claimant had provided a doctor's statement for days she reported she was ill, a doctor's statement does not automatically excuse an employee's absence.

When the claimant went to work on October 12, the employer discharged her for excessive absenteeism and for failing to fulfill her scheduling obligations because of her frequent unscheduled absences.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. Since the employer schedules employees to efficiently handle projected calls, the claimant's unscheduled absences resulted in increasing other representatives' workload and some callers having to wait before someone could answer their phone call. The employer tried to work with the claimant and did not give her a final written warning until she had been absent 71 hours. In accordance with its policy, the employer may terminate an employee after accumulating 51.2 hours of absence.

Even though the employer had business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. Almost all of her absences were the result of illness. On October 9, the claimant asked if she could leave work early and her supervisor told her she could, but it would not be excused. Since the claimant properly reported her absences when she was ill, she did not commit work-connected misconduct. As of October 7, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 31, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of October 7, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css