

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA RUPE
Claimant

APPEAL NO. 07A-UI-02636-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY FOOD SERVICE UNIT 1 LLC
Employer

**OC: 02-18-07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 2, 2007. The claimant participated in the hearing. Jeff Sweden, Corporate Trainer, participated in the hearing on behalf of the employer. Claimant's Exhibit A and Employer's Exhibits One and Two were admitted into evidence.

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 cashier/part-time baker for Liberty Food Service from May 2, 2004 to February 15, 2007. On February 1, 2007, the claimant received a verbal warning in writing for being disrespectful and rude toward a co-worker and displaying a poor attitude in front of customers (Employer's Exhibit One). On February 2, 2007, she called in and stated she "had some stuff to take care of today" (Employer's Exhibit Two). On February 5 and February 7, 2007, the claimant had kidney stone surgery and continued to stay in contact with Assistant Manager Deb Caudron every two to three days. She informed Ms. Caudron she had not been released to return to work. The employer was upset that the claimant was calling Ms. Caudron rather than the manager but the claimant had always reported her absences to Ms. Caudron, who happened to be her friend outside of work. The claimant was required to drink two gallons of water and strain her urine as well as take strong pain medication during her recuperation (Claimant's Exhibit A). She had doctors' excuses but did not provide them to the employer after her manager told her January 31, 2007, the notes "aren't worth the paper they are printed on" (Claimant's Exhibit A). On February 15, 2007, the claimant received a call from the security office stating she had a floral delivery. When the claimant went to pick up her flowers she was told the security supervisor had called the cafeteria and talked to the bookkeeper who stated the claimant's employment was terminated and she was not allowed in the facility. The employer considered the claimant to have quit her employment by failing to call her manager instead of her supervisor.

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 reported her absences to her supervisor, which is who she had reported to during her employment, and while the employer considered her to have voluntarily quit by contacting her supervisor instead of the manager, the claimant was properly reporting her absences as she understood the policy. The claimant was absent due to illness and provided medical documentation of her absences. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

DECISION:

The March 12, 2007, reference 01, decision is affirmed. 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/css