

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE F HOLGUIN
Claimant

APPEAL NO. 11A-UI-12411-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/21/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 13, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 13, 2011. Claimant participated. Employer participated through human resources generalist, Hanna Cook and team manager, Judy Easton. The employer's proposed exhibits were not admitted since the employer's representative did not provide them to the claimant or request that the Appeals Section to do so on its behalf.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a customer service representative from 2009 and was separated from employment the morning of August 19, 2011. Her last day of work was August 15, 2011 when she left her shift early because her mother became ill. She was throwing up blood and claimant, as her mother's primary caretaker, had to take her to the hospital. She was ultimately diagnosed with leukemia. The employer adjusted her schedule to accommodate her mother's child care schedule.

On August 16 a supervisor told her she had until August 19 to get Family Medical Leave Act (FMLA) documentation. Claimant took the paperwork to her mother's oncologist the same day and was told to get a release from her mother so her doctor could complete the paperwork. In the meantime her mother was in the hospital with a serious illness and was unable to execute the release. The employer terminated the employment before the end of business on August 19. Claimant's final absence was related to her mother's illness, rather than her mother being unable to provide childcare that day. Claimant's prior absences were related to her mother's illnesses and custodial issues regarding her granddaughter, for whom she is custodial guardian and is in the process of adopting. She had arranged for an alternate childcare provider, who did not work out.

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 § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work because of a non-minor child's illness is generally considered an unexcused absence. However, the claimant was her mother's putative caretaker and the nature of the illness on that date was severe enough to require emergency hospitalization. Furthermore, the employer told claimant she would have until August 19 to obtain FMLA paper work for her mother. Since her mother was medically unable to sign the release for the medical documentation and the employer discharged her before the

close of business on August 19, the final absence is considered excused and the employer has not established a final or current act of misconduct. Benefits are allowed.

DECISION:

The September 13, 2011 (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css