

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAVID R KERN
Claimant

APPEAL NO: 19R-UI-07777-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

OC: 07/21/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 14, 2019, 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 October 24, 2019. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

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 I for Mediacom Communications from February 14, 2017 to May 15, 2019. He was discharged because the employer believed he abandoned his job.

The claimant became ill toward the end of April 2019 and was eventually taken to the hospital by ambulance following a welfare check by police in May 2019. He did not have his identification, insurance card, keys or cell phone with him at the hospital and did not know how to contact the employer's Des Moines office. He was in the hospital for five days and his neighbor brought him his mail after several days which included a letter notifying the claimant the employer considered him to have voluntarily quit by abandoning his job.

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.

The claimant was unable to properly report his absences because he was hospitalized without his cell phone and did not know how to contact his supervisor in the Des Moines office as he would only be able to reach a national call center when he called the employer's general number. The claimant has an obligation to give immediate notice to the employer of a necessity for absence as soon as the claimant has knowledge of that necessity; however, where an individual left employment as the result of a mental disturbance that left her unaware of her surrounding, it was satisfactory to contact the employer as soon as she was able. *Quenot v. IDJS*, 339 N.W.2d 624 (Iowa App. 1983). In the present case, while the claimant was not suffering from a mental disturbance he was taken to the hospital by ambulance without his cell phone and consequently did not know how to reach his supervisor without the number in his cell phone until he returned home five days later.

The claimant had no intention of quitting his job but was unable to contact the employer to report his absences due to conditions beyond his control. Under these circumstances, the administrative law judge must conclude the claimant did not quit his job but was discharged for no disqualifying reason. Therefore, benefits must be allowed.

DECISION:

The August 14, 2019, 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