

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHYLLIS HUNTSMAN
Claimant

APPEAL NO: 10A-UI-02995-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 01-24-10
Claimant: Respondent (1)

Section 96.5-2-a –Discharge/Misconduct
871 IAC 24.32(7) –Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 17, 2010, 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 1, 2010. The claimant participated in the hearing. Diane Carpenter, Human Resources Representative and Bob Rasmussen, Department Manager, participated in the hearing on behalf of the employer.

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 production worker for Pella Corporation from September 26, 1994 to January 21, 2010. She was discharged for excessive absenteeism. The employer's attendance policy provides that three corrective action letters within a 12-month time frame can result in a recommendation for termination. The claimant's attendance was excellent until one or two years ago when her husband became ill with cancer. Her husband also worked for the employer and the claimant took time off intermittently under the Family Medical Leave Act to take care of him until his death October 5, 2008. The claimant struggled with depression and an inability to sleep after her husband's death. The claimant was informally counseled for attendance July 17, 2009. She received an employee counseling report and her first corrective action letter August 18, 2009. The counseling report was dated August 5, 2009, and the corrective action letter was dated August 6, 2009. The employer documented that the claimant had been given 45 weeks off during the last two years to deal with her personal needs but she needed to resolve those issues to become an active part of the team again. A second corrective action letter was issued December 1, 2009, and she was advised her job was in jeopardy. The third and final corrective action letter was issued to her January 21, 2010, when she did not work due to illness. The claimant spoke with the employer and reported she was not feeling well. The employer advised her that another absence might result in her termination which it did.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

The claimant was discharged January 21, 2010, for her third corrective action letter for attendance. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Most of the claimant's absences and her final absence were due to properly reported illness and therefore not considered misconduct under the unemployment insurance laws. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The February 17, 2010, 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/pjs