

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ANGELA K POOTS  
1327 HOLSTEIN PL  
WATERLOO IA 50701

ABCM CORPORATION  
PO BOX 436  
HAMPTON IA 50441-0436

Appeal Number: 05A-UI-11314-AT  
OC: 07/31/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

ABCM Corporation filed a timely appeal from an unemployment insurance decision dated October 24, 2005, reference 03, which allowed benefits to Angela K. Poots upon a finding that she had been discharged under circumstances not constituting job related misconduct. After due notice was issued, a telephone hearing was held November 18, 2005, with Ms. Poots participating and presenting additional testimony by Raymond Barbee. Human Resources Supervisor Cara Mayner participated for the employer. Employer Exhibit One was admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Angela K. Poots was employed by ABCM Corporation from January 16, 2001 until June 15, 2005. Ms. Poots last worked on April 3, 2005. She was unable to work thereafter because of a wrist injury. The employer initially took the position that the injury was not work-related. On June 15, 2005, administrator Daniel Larmore advised Ms. Poots that her employment had ended because she had exhausted all FMLA leave. He dismissed questions as to her status should the injury be determined as being work-related. The FMLA leave was eventually extended to July 20, 2005. Mr. Larmore again stated that Ms. Poots must reapply for work when released by the physician if she wished to return to employment.

On August 1, 2005 the employer received a letter from its workers compensation carrier indicating that the injury was indeed work-related. The company did not attempt to contact Ms. Poots. Ms. Poots did not contact the company because of her earlier conversations with Mr. Larmore.

#### REASONING AND CONCLUSIONS OF LAW:

The parties disagree as to whether the separation was a voluntary resignation or a discharge. The administrative law judge finds that the claimant's evidence is the more persuasive on this issue. Both Ms. Poots and Mr. Barbee were able to testify from firsthand recollections of the conversations with Mr. Larmore. Mr. Larmore was not called to testify and Ms. Mayner was not present during his conversations with Ms. Poots. From the claimant's testimony the administrative law judge concludes that the employer discharged Ms. Poots.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). On the other hand, absence due to a medical condition cannot be held against an employee for unemployment insurance purposes provided the employee has properly reported the absence to the employer. See Higgins and 871 IAC 24.32(7).

The evidence persuades the administrative law judge that the employer was aware of the reason for Ms. Poots' absences after April 3, 2005. The evidence establishes that the absences were caused by a medical condition. Therefore, the absences, while excessive, were not unexcused. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 24, 2005, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

dj/kjw