

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI ROGERS
Claimant

APPEAL NO. 07A-UI-01192-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 12-31-06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 23, 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 March 7, 2007. The claimant participated in the hearing. Sarah Fiedler, Administrative Assistant, 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 machine operator for Team Staffing last employed at CDS from June 18, 2005 to January 2, 2007. She was discharged for attendance reasons. The claimant was absent full or partial days 28 times between January 10, 2006 and January 2, 2007. Thirteen of those absences were due to properly reported illness and the remainder were days she left early because of illness or because the employer did not have enough work for her. The claimant was pregnant and was having some difficulty standing all day. On January 2, 2007, she asked if she could perform sit down work, even for 10 minutes, and although the employer would usually find some type of sitting work for her to do when it had it available, it denied her request January 2, 2007, and told the employer she was “demanding sit down work,” a charge the claimant denies.

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). While the claimant did have several absences, it appears most were due to properly reported illness or being sent home early by the employer. Although she did ask to sit down for awhile January 2, 2007, and may have been asking for more sit-down work because of her pregnancy, neither her requests nor her absences seem excessive under the circumstances. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 23, 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/kjw