

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NARCIS N CRUMP**

Claimant

**APPEAL NO. 12A-UI-04039-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 03/04/12**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 3, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 2, 2012. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate. Claimant's Exhibit A was admitted to the record.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant 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 separated from employment on March 7, 2012 because she was unable to provide medical information to the employer about her absence from work. Bed rest was ordered from January 14 through February 1, 2012 after an emergency room visit in Chicago. She was hospitalized upon orders of her Iowa primary physician from February 4 through 19 and again from February 21 through March 6, 2012. The employer did not consider the January absence period excused since neither medical provider would provide an excuse or documentation for Family Medical Leave Act (FMLA) application. She notified the employer of the problems getting the emergency room documentation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

Excessive and unexcused absenteeism can constitute misconduct. Iowa Admin. Code r. 871-24.32(7). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

FMLA provisions were enacted to be an employee protection and shield, not a sword to be used by an employer as a weapon against the employee. In spite of the employer's policy requiring a medical excuse related to illness, claimant's good faith efforts to obtain the documentation from medical providers for the absence period was sufficient to excuse the lack of FMLA documentation and the absences.

#### **DECISION:**

The April 3, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css