

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOLLY YORK**  
Claimant

**APPEAL NO: 13A-UI-11658-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOCUS SERVICES LLC**  
Employer

**OC: 07/28/13  
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Focus Services, LLC (employer) appealed an unemployment insurance decision dated October 9, 2013, reference 01, which held that Holly York (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2013. The claimant participated in the hearing. The employer participated through Angie Pratt, Human Resources Assistant.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service and sales agent in training from May 28, 2013 through June 20, 2013. The employer said she was considered to have voluntarily quit after three days of no-call/no-show ending June 19, 2013. The employer did not have the first hand witness testify and could only rely on hearsay evidence which the claimant disputed. The claimant testified that she called in ill on June 17 and 18, 2013 and had a doctor's excuse. She spoke with trainer Brian Marshall each time but on the second day, he told her she was discharged.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 20, 2013 for 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. 871 IAC 24.32(7).

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). The claimant's final absences were due to properly reported illness and are therefore not considered misconduct under the unemployment insurance laws. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 9, 2013, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css