

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER SEXTON
Claimant

APPEAL NO: 12A-UI-00992-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GLOBAL INC
Employer

**OC: 12-11-11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 19, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 23, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 mixer operator for Kraft Foods Global from June 18, 2008 to December 8, 2012. The claimant sustained work-related bilateral carpal tunnel syndrome and had surgery September 29 and November 9, 2011. While on light duty the claimant was placed in the safety office and started getting migraine headaches. She went to her physician and tried different medications for the migraines but when the medications did not work she was taken off work by her doctor October 25, 2011. She called in every day to report her absences and had doctor's notes excusing her from work from October 25, 2011 through December 8, 2011, when her employment was terminated. The claimant received a note from her mailman that she had a certified letter December 6, 2011. She picked up the letter December 8, 2011. The letter was originally sent November 18, 2011, to the claimant's previous absence and that is why it took so long to get to her. The letter said the claimant was required to attend a meeting November 22, 2011, to discuss her attendance and failure to attend the meeting or call would result in her termination. Because the claimant did not receive the certified letter until after the date of the meeting she obviously could not attend the meeting or call to notify the employer she would not be there. After receiving the letter the claimant called human resources and her union representative but the meeting has not been rescheduled to date. She received a full release to return to work from her migraines December 9, 2011, and received a full release to return to work from her carpal tunnel syndrome surgery January 11, 2012.

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). The claimant was off work due to work-related carpal tunnel syndrome surgery from September 2011 until January 11, 2012. During that time she was working light duty in the safety office and started suffering from migraine headaches. She was off work for the migraines from October 25, 2011, until she was released to return to work December 9, 2011. In the meantime the employer sent the claimant a certified letter, to her previous address even though she had updated her address with the employer, stating she was required to attend a meeting regarding her attendance November 22, 2011, or call the employer stating she could not be at the meeting, or her employment would be terminated. The claimant did not receive the letter until after the meeting date had passed. She called the employer and the union and began filing appeals but still has not received a rescheduled meeting date or received her job back. The claimant called in to report her absences every day she was gone and had doctor's excuses for her absences. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

The claimant was released to return to work following her migraines December 9, 2011, and received a full release without restrictions following her carpal tunnel surgeries around January 11, 2012. She is able and available for work effective December 9, 2011.

DECISION:

The January 19, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason and is able and available for work effective December 9, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css