

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NGA N NGUYEN**  
Claimant

**APPEAL NO. 12A-UI-06278-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAIL SERVICES LLC**  
Employer

**OC: 04-22-12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 17, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 2, 2012. The claimant did participate with the assistance of Phung Nguyen, interpreter, along with her witness, Kim Luong, her daughter. The employer did participate through Donna Boetger, human resources manager. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job 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 pre-sort operator, full-time, beginning April 25, 2005, through April 20, 2012, when she was discharged. The claimant last worked on July 26, 2011 because she was admitted to the hospital for cancer treatment. She was not released by her oncologist for even part-time work until April 19, 2012. After being released for part-time work, she returned to the employer to offer her services on April 20 and at that time was told she was discharged due to her inability to perform her full-time work duties and because she had run out of leave time. The claimant was released to return to any work without restrictions on May 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 § 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(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant was absent from work due to her cancer. The employer chose not to hold her job for her during the duration of her illness. The claimant's absences due to cancer treatment are not considered volitional and thus the employer has not met their burden of proving job-connected misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The May 17, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw