

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MARALEE STEVENSON**  
Claimant

**APPEAL NO: 19A-UI-09420-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 10/20/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 21, 2019, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 31, 2019. The claimant participated in the hearing. Shirley Thomas, Supervisor in the Distribution Center, 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 order filler for Casey's Marketing Company from October 23, 2017 to August 7, 2019. She was discharged for exhausting her medical leave and not knowing her expected date of return.

The claimant's last day worked was May 24, 2019. She sustained a work-related injury and was on FMLA from May 31 to June 13, 2019. Then her daughter died and she was tasked with the care of her young grandchildren. She was suffering from mental health issues and on July 1, 2019, her treating physician wrote a note excusing her from work until August 1, 2019. On July 31, 2019, her doctor wrote another note stating the claimant should remain out of work as a "result of a mental health condition." It did not say when she could return to work and consequently the employer determined it could no longer hold her job for her. On August 7, 2019, the claimant said she would not be returning and the employer told her she could reapply.

The claimant testified she is now able and available for work and has no restrictions that would prevent her from working.

**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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant's last doctor's note, dated July 31, 2019, stated she could not perform work at that time and did not give a return to work date. As a result, the employer decided at that time it could no longer hold the claimant's job open for her and effectively terminated her employment. One week later the claimant said she would not be returning and while the employer considers that to be a voluntarily leaving of her employment, that action occurred after the employer terminated the claimant's employment. Because the claimant's final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

#### **DECISION:**

The November 21, 2019, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn