

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGIE KOPPANG

Claimant

APPEAL NO: 11A-UI-13258-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC

Employer

OC: 09-11-11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 3, 2011, 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 November 2, 2011. The claimant participated in the hearing. Jennifer Foster, human resources area manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

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 bulk order filler for Family Dollar Services from July 14, 2008 to September 13, 2011. She was discharged for excessive absenteeism. Termination occurs if an employee reaches 242 hours of absenteeism or eight attendance occurrences within a rolling 12-month period. The claimant's employment was terminated because she reached 242 hours of absenteeism during a rolling 12-month period (Employer's Exhibit Three and Four).

The claimant was absent 23 days during the last 12 months of her employment due to the illness of herself or one of her three children. Her youngest child has experienced several illnesses since her birth a little over one year ago, and many of her absences were attributable to that fact, as she is a single mother of three children, does not have family nearby, and her youngest child's daycare center will not take her if she is sick. The claimant's last absence was due to the properly reported illness of her one year old daughter, who had an ear infection and high temperature. The claimant was tardy on 12 occasions during the final 12 months of her employment. She does not recall the reasons for those incidents of tardiness but did call the employer to report she would be late on those days. She left early 11 times, because when her children's school or day care center called and stated they were ill and needed to be picked up, she did not have anyone else to go get them, take them home, and stay with them. The claimant received a written warning about her attendance October 26, 2010, after accumulating

ten full days of absenteeism within a rolling 12-month period (Employer's Exhibit One); a written warning about her attendance April 11, 2011, after accumulating 20 full days of absenteeism (Employer's Exhibit Two); and was terminated for excessive absenteeism September 13, 2011, for accumulating 30 full days of absenteeism following her absence due to her child's illness September 12, 2011 (Employer's Exhibit Four). She did have a doctor's excuse for that absence but was discharged before she could give it to the employer and would still have been assessed hours toward her total. The claimant asked her supervisor where she stood as far as attendance the week before her termination and was told she was "okay" after he checked on the situation.

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). While the claimant did have a history of excessive absenteeism and violated the employer's attendance policy, 23 of those absences were due to the properly reported illness of herself or her children, and the 11 times she left early were in response to calls from her children's school or daycare center. Because the final absence was related to properly reported illness with a doctor's excuse, no final or current incident of unexcused absenteeism, as that term is defined by Iowa law, has been established. Therefore, benefits must be allowed.

DECISION:

The October 3, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw