IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TOSHA COLLINS
Claimant

QWEST CORPORATION
Employer

APPEAL NO: 10A-UI-15335-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-03-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 29, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 31, 2011. The claimant participated in the hearing. Colin Chrouser, Telesales Manager I and Maxine Piper, Employer Representative, 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 center sales and service associate for Qwest from November 9, 2009 to October 6, 2010. She was discharged for exceeding the allowed number of attendance occurrences. The employer's attendance policy states that employees of less than one year must have less than four occurrences or less than seven days absence as an occurrence may last more than one day. On January 20, 2010, the claimant was called to her nine-year-old son's school to pick him up due to his behavioral issues and received a written warning for her absence. On February 8, May 17 and August 16, 2010, she was called away from work to deal with issues involving her son. On June 2, 2010, the claimant called the employer from the parking lot and said she could not come in because she was experiencing personal and financial problems and was too emotional. She received a warning of dismissal due to attendance February 8, 2010, that remained in effect until May 9, 2010. She received a written warning due to attendance May 17, 2010. She received another warning of dismissal and a second chance June 2, 2010, after accumulating her fifth occurrence because she had a note from a local hospital stating she was there with her son. The claimant was aware at that time her job was in jeopardy. On September 30, 2010, the claimant's son's school called and stated she needed to pick him up because he threw a chair in the nurse's office and was banging his head on the floor. She knew when she left she would lose her job. She had set up a backup plan whereby her father or grandparents would pick her son up when needed but on September 30, 2010, her grandfather was in the hospital and her father had just started a new

job. They had picked up her son when the school called the claimant on several occasions in the past but were not available September 30, 2010, and her employment was terminated October 6, 2010.

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). Five of the claimant's six absences were due to her son's illness. When the school or daycare called her to pick up her son and her backup childcare providers, who basically had, and required, specialty experience working with her troubled son, were not available, the claimant effectively had no choice but to leave and pick him up. This situation is no different from an absence due to any other illness. The claimant was placed in an impossible situation when she was forced to choose between taking care of her child and her job. While the employer does have the right to expect its employees to be at work, all but one of the claimant's absences in this case were due to her son's illness. Six absences in an 11-month period is not excessive. Because the final absence was related to the properly reported illness of her son, no final or current incident of unexcused absenteeism has been established and her absences were not excessive, the administrative law judge concludes benefits are allowed.

DECISION:

The October 29, 2010, reference 01, 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

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