

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LETHA M CARTER
Claimant

APAC CUSTOMER SERVICES INC
Employer

APPEAL 15A-UI-06353-KCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2015 in front of Administrative Law Judge Kristin A. Collinson. Claimant participated. Employer was slated to participate through Tammy Mason as she had registered on the agency C2T system. Ms. Mason did not answer the telephone when called to begin the hearing. Employer's Exhibit One was entered and received into the record.

The entire record, including the recording of the hearing was reviewed by Administrative Law Judge Teresa K. Hillary on September 21, 2015.

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: Claimant was employed full-time as a customer service representative or patient care advocate beginning on July 26, 2010 through April 20, 2015 when she was discharged for taking excessive breaks.

The claimant was discharged for taking too many breaks. The claimant had been warned about taking too many breaks. The claimant's doctor had provided that the claimant needed additional breaks due to her ongoing medical condition. The claimant was providing all of the information from her doctor to the employer through the human resources department. She last gave paperwork to Ms. Mason on March 18 that indicated per the claimant's doctor she needed additional breaks to deal with a chronic headache. The claimant had applied for and been granted leave under the Family Medical Leave Act (FMLA) for these headaches for a period of years. Each of the claimant's additional breaks were for a medical condition that was covered by FMLA. She was not taking the additional breaks for any other reason other than to deal with

her medical condition. The claimant had submitted all of the proper paperwork to Ms. Mason as of March 18 and she could continue to take additional breaks as needed to deal with her medical condition. The claimant was taking additional breaks only to deal with her medical condition. Her additional breaks were all covered by her FMLA.

In addition to the headache issue, the claimant had short-term permission for additional bathroom breaks due to a severe bladder infection. She followed the process by giving her doctor's note to her team lead who forwarded them to human resources.

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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences (including extended break periods) are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. The claimant was given FMLA for her breaks due to her medical condition. All of the extended breaks were properly reported due to illness and were covered by the claimant's approved FMLA. A reported absence related to

illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The May 26, 2015, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge for
Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

tkh/kac/pjs