

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLINE J ULLOA**  
Claimant

**APPEAL NO. 08A-UI-06210-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEDICAL BILLING SYSTEMS INC**  
Employer

**OC: 06/01/08 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 25, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 22, 2008. Claimant participated and was represented by Mark Fowler, Attorney at Law. Employer participated through Linda Naugle and Daniel Speth. Claimant's Exhibits A through B were received.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time billing clerk from September 25, 2001 until June 3, 2008 when she was discharged. She was absent most recently on June 3 when she called employer at 10:30 a.m. and stated she had overslept because of having taken a muscle relaxant at 5 a.m. that morning prescribed by her treating physician for back pain. She usually took the medication at night and her physician warned her not to take it before driving or in the morning as it would make her drowsy. (Claimant's Exhibit B) Verbal warnings were issued on February 25, 2008 and March 31, 2008 when she was not told her job was in jeopardy but was told to call to report absences but was not told to call by a time certain or to communicate directly with any particular person. She was injured at home on February 17. On February 18 claimant left a message for employer at 3 a.m. and sounded disoriented; on February 19 she called late because she could not get out of bed due to being dizzy; on February 25 she was thought to be a no call-no show and later told employer that her son Luke told her it was 7:30 a.m. when she called in to report back problems. She was tardy on March 10, 14, 28, 31, April 7, 8, and May 12, 2008 related to morning chiropractic appointments for which she called employer or arranged in advance. She was otherwise tardy due to "running behind" on May 5 and 7 and because she did not have hot water on May 29.

## 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(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 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).

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. While claimant did have her share of attendance and timeliness issues, an employee who is ill or injured is not able to perform their job at peak levels, especially when affected by fatigue related to a medication side effect. 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 (tardiness) for which she was discharged was related to the side effect of a prescribed medication, even though claimant was unwise to take it other than at bedtime, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The June 25, 2008, 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs