

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CHERIE PETERSON**  
Claimant

**APPEAL NO: 20A-UI-08919-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 14, 2020, 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 September 11, 2020. The claimant participated in the hearing with witness, former CNA Michael Morgan. Cris Kirsch, Administrator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant was discharged for disqualifying job misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time program instructor for Dubuque County from February 5, 2020 to April 6, 2020. She was removed from the schedule following an illness.

On March 26, 2020, the claimant called the employer and reported she was ill and would not be at work. On March 27, 2020, she provided the employer with a doctor's note stating she needed to self-isolate for seven days. The seven days was up April 3, 2020. The claimant had obtained another doctor's note stating she could not return to work until April 8, 2020, but the employer never received a copy of that note from the claimant or her physician although her physician said it would be faxed to the employer. On April 6, 2020, the scheduler told the claimant she was off the schedule. The claimant tried to explain she was not allowed to return until April 8, 2020, but the scheduler did not relent and when the claimant asked to be returned to the schedule she was told she would not be put back on the schedule.

**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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

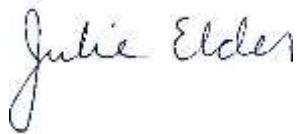
The parties disagree about the facts of this case. The employer maintains the claimant was scheduled to return to work April 3, 2020, and failed to do so and refused to respond to its several phone calls and text messages and even hung up on the scheduler a few times. The claimant's second doctor's note released her to return to work April 8, 2020. She denies ever receiving any phone calls or text messages from the employer. Although both witnesses were credible, in this situation more weight must be given to the claimant's first-hand testimony.

The claimant notified the employer of her illnesses and provided the employer with a doctor's note excusing her from work from March 27 through April 3, 2020. After that time expired the claimant received another doctor's note excusing her from work until April 8, 2020. The employer did not receive a copy of that note from the claimant's physician, a fact of which the claimant was not aware. Because of that, the scheduler notified the claimant she was removed from the schedule April 6, 2020, and her employment was effectively terminated at that time.

While there was a lack of communication between the parties and the claimant should have followed up with the employer to insure it received her second doctor's note, she had no reason to believe her doctor did not send the note. The claimant had no intention of voluntarily leaving her employment. Instead, the employer terminated her employment April 6, 2020. The claimant's actions do not rise to the level of disqualifying job misconduct. Therefore, benefits must be allowed.

**DECISION:**

The July 14, 2020, reference 01, decision is reversed. 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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September 15, 2020  
Decision Dated and Mailed

je/sam