IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JULIE K LENZINE
Claimant

CARE INITIATIVES
Employer

APPEAL NO: 12A-UI-10958-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/12/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Julie K. Lenzine (claimant) appealed a representative's August 30, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2012. The claimant participated in the hearing. Treve Lumsden of TALX Employer Services appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 12, 2008. She worked full time as a certified nursing aide (CNA) in the employer's Chariton, Iowa long-term care nursing facility. Her last day of work was August 2, 2012. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy provides for discharge for reaching ten absences in a year. If there was to be an absence, the policy requires that the call in be made at least two hours in advance of the shift. The claimant normally worked the shift beginning at 2:00 p.m. In 2012, through July 27, the claimant had the following absences:

Date	Occurrence/reason if any
02/21/12	Absence, sister-in-law in hospital, properly called in.
02/27/12	Absence, additional day of bereavement beyond allowed three days, properly called in
03/01/12	" " " " " " " "
04/07/12	Absence, sick, late call in.
04/30/12	Absence after working 45 min., leg pain.

05/01/12	Absence, leg pain, properly called in.
07/07/12	Absence, sick, late call in.
07/20/12	Absence, sick, late call in.
07/22/12	Absence, mother-in-law in hospital, late call in.

The claimant might also have been absent on July 23 and July 24, but no information was available for those dates.

When the claimant called in her absence on July 7, she spoke to the administrator, Youmans. He told her that her call in was late which was unacceptable, and he questioned the number of absences the claimant had been incurring.

The claimant was scheduled to work on July 28 and July 29, a weekend which she had previously requested to be off, which request had been denied. She called in on July 28 after the start of her shift to indicate she would be absent that day and the next; the reason was that she had recently learned that her mother's cancer had returned. No specific reason was given to explain why the call was late.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). In this case, the reason for the final absence and many of the prior absences were not properly reported. The claimant's final absence cannot be treated as excused; she had excessive prior absences which

are also unexcused. The claimant had previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 30, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 2, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs