

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY A BUCHOLZ
Claimant

APPEAL NO. 08A-UI-08295-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLIVE CHILDREN'S CENTER II INC
Employer

**OC: 08/03/08 R: 02
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 10, 2008, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 1, 2008. Claimant opted not to participate but had her husband, Jon Ferguson, and mother, Lori Buchholz, participate in her stead. Employer participated through director Tonya Ede, who opted not to call Crystal Agan as a witness.

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 assistant teacher in an infant room from May 22, 2007 until September 14, 2007, when she was discharged. Claimant's family received notification that her maternal grandfather was dying in the Perry, Iowa, hospice and she called Agan the evening of September 13 to leave a message indicating the reason she would not be at work. During the morning of September 14 claimant listened to a message on her cell phone from Ede, who told her she was terminated from employment for being a no-call, no-show that day. Claimant attempted to reach Ede and Agan but was unable to do so. Her grandfather died on September 18 and her mother stopped by the employer's facility (which is near the funeral home) to pick up claimant's final paycheck. While there, Ede expressed her sympathy and asked for claimant's address so the children could send condolences. She relayed this message to claimant's husband, who was waiting in the car.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

While a failure to report to work without notification to the employer is generally considered an unexcused absence, claimant clearly reported her absence to employer since employer knew enough to offer condolences to claimant's mother. Furthermore, employer's testimony is completely incredible that claimant had three or more no-call, no-show absences, since claimant, her husband, and her mother all heard the termination message from Ede on September 14. These falsehoods taint the employer's remaining testimony. Claimant's absence was properly reported and excused, so she was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The September 10, 2008, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw