

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI CERO**  
Claimant

**APPEAL NO: 07A-UI-09816-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEW HAMPTON CARE CENTER INC**  
Employer

**OC: 06-17-07 R: 02**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 11, 2007, 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 November 6, 2007. The claimant participated in the hearing with Attorney Mark Fransdal. John Rankin, Provisional Administrator; Charlotte Brincks, RN; and Amy Fisher, RN, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time LPN for New Hampton Care Center from April 21, 2003 to October 3, 2007. The employer's policy requires employees to call in and report their absences and find their own replacement. The employer issued a written warning to the claimant July 5, 2005, after she called in July 4, 2005, and failed to find her own replacement. The warning indicated she had 24 call-ins in two and one-half years without medical excuses or finding a replacement. The claimant was in a car accident September 26, 2007, and notified the employer September 29, 2007, she would not be in because of the accident. The employer told her she needed to provide an emergency room visit sheet when she returned and the claimant agreed. She assumed the employer understood she would be off work for at least a few days and did not report to work or call the employer for her next two shifts and the employer terminated her employment October 3, 2007, in accordance with its policy that two no-call no-shows result in termination. The employer attempted to reach her several times but was unable to do so. On October 4, 2007, the claimant was involuntarily committed to a mental health facility due to severe depression and remained in the hospital for two weeks. She had been suffering from depression since June 2006 when her son was killed in a car accident.

## 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:

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 cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. IDJS, 356 N.W.2d 218 (Iowa 1984). The claimant was in a car accident September 26, 2007, and called the employer September 29, 2007, to report she would not be at work. She mistakenly assumed the employer understood she would not be in for a few days and consequently did not call the employer again. It is unclear whether she was aware her employment was terminated October 3, 2007, due to two no-call no-shows, but it is more likely than not that she was not mentally capable of contacting the employer to inform it of her situation in the days preceding her hospitalization. Because the final absence was related to illness when the claimant was mentally incapacitated, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The October 11, 2007, 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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Decision Dated and Mailed

je/pjs