

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH GONYOU
Claimant

APPEAL NO: 17A-UI-08224-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

OC: 07/23/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 30, 2017. The claimant participated in the hearing. Kathy Anderson, Human Resources Manager and Caroline Semer, Employer Representative, 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 part-time dealer card room employee for Diamond Jo Worth from February 15, 2013 to July 24, 2017. She was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault, point based attendance system. If an employee accumulates 12 points in a rolling calendar year her employment is terminated. Points drop off after one year. The employer issues employees informal point notifications letting them know how many points they have at a given time. The claimant received point notifications November 28, 2016, for accruing six points; January 3, 2017, for accruing eight points; April 16, 2017, for accruing 10 points; and a “final final” written notification May 25, 2017, for accruing 13 points. At that time, the claimant was informed that future occurrences would lead to termination and she knew her job was in jeopardy.

One of the claimant’s points dropped off June 10, 2017, which took her to 12 points and another point dropped off July 11, 2017, which took her to 11 points. The claimant had a medical procedure done July 21, 2017, and properly reported her absence. The employer assessed her one point and because she had 12 points at that time she was suspended July 22, 2017. The employer notified the claimant her employment was terminated July 24, 2017. The claimant testified she had doctor’s notes excusing most of her absences.

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(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. *Casper 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.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The August 4, 2017, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed
je/scn