

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TWILA L HUGGER**  
Claimant

**PARCO LTD**  
Employer

**APPEAL 14A-UI-04431-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/30/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 17, 2014, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2014. Claimant participated. Employer participated through general manager Corinne Van Woert.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time (Monday through Friday 11 a.m. to 2 p.m.) as a crew member and was separated from employment on January 20, 2014. Her last day of work was January 3, 2014. The employer's witness did not have the employment history documentation with her so was not certain of the days claimant was absent and called to report her absence or the days she was absent and did not call to report her absence. Claimant became ill on December 26, 2013 and sought medical treatment. She supplied the medical excuse to the employer and returned to work on December 27, 2013, and continued to work through January 6, 2014, which aggravated her diagnosed pneumonia and flu. She called Van Woert or co-manager Tracey each day during the week of January 6, 2014, to report her continued illness. Tracey told her to obtain another medical excuse when she called on that Wednesday, but she was unable to do so due to lack of local medical care coverage and continued illness. She has DHS based Iowa Care coverage, which is only available in Iowa City. Claimant lives in Cedar Rapids and was billed several thousand dollars for her care at the Mercy Hospital emergency room in Cedar Rapids. When she called the employer again the following Monday, Van Woert told her she was fired. She had been warned in writing about absenteeism and failure to report absences and was on disciplinary probation.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Since claimant did not have three consecutive no-call/no-show absences as required by the rule in order to consider the separation job abandonment, the separation was a discharge and not a quit.

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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

The employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

In spite of employer's request for a medical excuse or release beyond the December 26, 2013, absence, claimant's absence was excused. The inability to afford a medical appointment because of lack of local health insurance coverage excused the failure to provide a medical excuse or release. In the case of an infectious illness, it would seem reasonable that an employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. Benefits are allowed.

**DECISION:**

The April 17, 2014, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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