

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANGELA L TAPP**  
Claimant

**DIVERSIFIED SERVICES FOR INDUSTRY**  
Employer

**APPEAL 14A-UI-11395-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/13**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 27, 2014 (reference 02) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2015 and completed on February 10, 2015. Claimant participated with her daughter Abby Tapp. Employer participated through UC Advantage Vice President of Operations Gracie Alexander, on the issue of the fact-finding participation only. Also participating on behalf of the employer was Human Resources Generalist Carrie Taylor; Area Manager Laura Roy; and represented by Stuart Larimer of UC Advantage. Employer's Exhibits One and Two were received. Taylor did not participate on February 10, 2015 as she was no longer employed.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cleaner from September 1, 2014 and was separated from employment on October 9, 2014 when she was discharged. On Monday, October 6, 2014 the claimant told Taylor she needed to go to a dentist. She went that afternoon and was prescribed antibiotics and pain medication. The dentist released her to work on October 7, 2014 but she had become ill from the tooth infection and her daughter was unable to wake her up. Her dentist later told her it was possible because of side effects of the infection in the tooth. The employer's policy is to call area manager Rosa Sanchez or Taylor at their assigned phone numbers, which had been provided to the claimant, two hours prior to the shift start time or leave a message. Claimant did not do so because she does not have a phone and was unable to wake up enough to call. Claimant's daughter attempted to contact Taylor on October 7 and 8, 2014 by leaving notes on her door because Taylor provided transportation to claimant and knew claimant was having dental problems. Claimant's daughter could not get her to wake up as she was "in and out of it" because the tooth "infection made her that sick." She woke claimant up enough every three hours for medication but they had no car or phone and claimant

was unable to leave the home to communicate with the employer. On October 9 she reported for work an hour before Taylor arrived and was suspended pending a decision. Taylor went to claimant's home on October 9 at 4:00 p.m. and, rather than going to the door, stopped in the driveway and told claimant's son's girlfriend she was fired.

### **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 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.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, claimant was physically and medically unable to report her absences due to illness. Her daughter made reasonable attempts to do so for her. See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved. Because her last absences were related to illness with inability to report excused, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The October 27, 2014 (reference 02) unemployment insurance decision is affirmed. 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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