IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

DIANNA L TREHY
Claimant

CARE INITIATIVES
Employer

APPEAL NO: 18A-UI-12237-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/02/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 14, 2018, 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 January 10, 2019. The claimant participated in the hearing. Christina Allen, Business Office Manager; Markie McElvain, Administrator; and La Keisha Hudson, 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 full-time CNA for Care Initiatives from August 2, 2018 to November 30, 2018. She was discharged for attendance issues.

The employer's attendance policy assesses occurrences for unscheduled absences. An employee is required to call the employer to report her absence two hours prior to the start time of her shift. If she has three or more consecutive absences and provides a doctor's excuse it counts as one unscheduled absence. The seventh unscheduled absence in a 12 month period results in a verbal warning; the eighth unscheduled absence in a 12 month period results in a written warning; the ninth unscheduled absence in a 12 month period results in a final written warning; and the tenth unscheduled absence in a 12 month period results in termination.

On October 16, 2018, the claimant called and reported she had the flu and a doctor's note and received one occurrence; on October 28, 2018, she called and reported she had back pain and received one occurrence; on November 5, 2018, the claimant called at 8:00 a.m. for her 8:00 a.m. shift and stated her grandmother was in the intensive care unit and received one occurrence; on November 10, 2018, the claimant was 20 minutes late for her 8:00 a.m. shift and received one-half of an occurrence; on November 11, 2018, she was 10 minutes late for her 8:00 a.m. shift and received one-half of an occurrence; on November 14, 2018, she called in

and stated she had back and leg pain and received one occurrence; on November 19, 2018, the claimant called at 7:30 a.m. for her 8:00 a.m. shift and said she would be late and received one-half of an occurrence; on November 22, 2018, the claimant called and stated she was going to the emergency room but did not provide a doctor's excuse and received one occurrence; on November 24, 2018, she was a no-call/no-show and received one occurrence; on November 25, 2018, she called and stated she was going to the emergency room for a migraine but did not provide a doctor's note; on November 26, 2018, the claimant was a no-call/no-show; on November 27, 2018, the claimant called at 8:20 a.m. for her 8:00 a.m. shift and said she had a migraine and received one occurrence; on November 28, 2018, the claimant called less than two hours before the start of her shift, said she had a migraine but did not provide a doctor's excuse; and on November 20, 2018, she called and stated she had a headache and did not provide a doctor's note and received one occurrence for a total of 12 and ½ occurrences.

The employer issued the claimant a verbal warning October 16, 2018, for accumulating an unscheduled absence during her first 90 days of employment; a verbal warning November 5, 2018; and a final written warning November 26, 2018.

The claimant sustained a work-related injury October 27, 2018, and was placed on light duty November 1, 2018.

The employer terminated the claimant's employment November 30, 2018, for accumulating 12 and ½ occurrences.

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. *Cosper 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.

The claimant incorrectly asserts that she did not need to provide doctor's excuses for her absences because the employer could access her medical information as she was on worker's compensation. In nearly every worker's compensation case, a third party administers the program for the employer and the employer generally does not have access to the claimant's medical records. Consequently, it is the claimant's responsibility to provide medical documentation to the employer regarding her absences. If the claimant had done so in this case she would have eliminated several of her occurrences and would have had only six as of November 30, 2018. Because she failed to do so, however, she exceeded the allowed number of attendance occurrences.

That said, the claimant's final absence was due to a properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The December 14, 2018, reference 01, decision is affirmed. 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/scn