

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TASHA R DONTJE**  
Claimant

**APPEAL NO: 130-UI-08061-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARTELS LUTHERAN HOME INC**  
Employer

**OC: 03/03/13**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 29, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2013. Claimant participated. Employer participated through human resources coordinator Carol Brown and health services co-managers/DONs Cindy Guyer and Brenda Schadeke. Employer's Exhibit 1 (fax pages 5 – 18) was received. The administrative law judge took official notice of the administrative record.

**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 last employed full-time as a CNA and was separated from employment on June 22, 2013. She called to report her absence more than two hours before her shift on February 27, 2013, which the message-taker, Elizabeth Rotz, reported as "Sick." (Employer's Exhibit 1, p. 9) She was absent due to a family emergency. She is divorced and her children (ages 2, 13, and 16) entered the marital home to retrieve some personal belongings. They did not realize they were not supposed to do that but their step-father called the police. Claimant was on the phone with the sheriff's deputy for over an hour while her ex-spouse was on the phone with a city police officer. One child became hysterical and eventually her ex-spouse agreed not to press charges against the children. She did not go home to let the dog out as she lives an hour from the work place. The employer has a no-fault attendance policy that treats all absences the same, regardless of reason. Claimant had absences for unknown reasons on September 18 and 27, 2012; December 1 (toe injury and post-surgical recovery); and December 21 and 22, 2012 (ill with fever and suspected pneumonia, and doctor prohibited her from working around elderly people). (Employer's Exhibit 1, p. 10) The employer did not provide a "Call In/Tardy Form" for any other absences other than December 21, 2012, and February 27, 2013. All absences, except the final incident, were related to illness and supported with medical documentation.

## 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 § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

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. A failure to report to work because of family problems is generally considered an unexcused absence. However, the final incident required her attention because her children and the police were involved. Even if it is considered unexcused, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because her absences were otherwise 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. Benefits are allowed.

**DECISION:**

The March 29, 2013 (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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs