

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DARCEY Y WEBBER
704 LINCOLN RD
STORM LAKE IA 50588**

**METHODIST MANOR
4TH & LARCHWOOD
STORM LAKE IA 50588**

**Appeal Number: 04A-UI-05772-LT
OC 05-02-04 R 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the May 14, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 16, 2004. Claimant did not respond to the hearing notice instructions and did not participate. Employer did participate through Connie Jensen and Janelle Schlenger. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time LPN from March 8, 2004 through April 30, 2004 when she was discharged. Claimant called to report her absence due to lack of childcare for April 30, 2004. She was tardy on March 17 and 31 related to an ill child. On March 31, claimant was absent

because her son was in the hospital for one week with a "serious illness" according to the treating physician, Stephen C. Raynor, M.D. (Department's Exhibit D-1)

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:

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.

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). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Although an absence related to a mere lack of childcare unrelated to illness is considered unexcused, this was the sole absence that was not related to the child's serious illness and does not meet the excessiveness standard for unexcused absenteeism. Since employer discharged her on April 30, the potential May 1 and 2 absences are not considered. No parent should have to choose between attending to a hospitalized child (most certainly when it is upon the advice of the treating physician) and their job. Because all other absences were related to the properly reported illness of a young child, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The May 14, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf