

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**PAMELA R VOGEL**  
Claimant

**APPEAL NO: 19A-UI-03772-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY HEALTH CENTERS OF SOUT**  
Employer

**OC: 04/14/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 3, 2019, 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 May 29, 2019. The claimant participated in the hearing and was represented by Attorney Angela Hill-Hartley. Cody Cooper, Human Resources Director; Jeanine Eddy, Director of Quality; Samantha Cannon, CEO; and Andrea Masters, CCO; 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 medical records clerk for Community Health Centers of South from April 1, 2005 to April 16, 2019. She was discharged due to absences attributed to illness.

The employer's attendance policy has four steps. Four unscheduled absences, or occurrences, within a six month rolling period results in a first step verbal warning; five unscheduled absences within a rolling six month period results in a second step written warning; six unscheduled absences within a rolling six month period results in a final written warning and one day suspension; and seven unscheduled absences within a rolling six month period results in termination. Absences of two or more consecutive days results in one occurrence.

The claimant suffers from a chronic kidney disease. She received a verbal warning for attendance August 29, 2018, after accumulating four occurrences (no dates provided). Her absences were due to properly reported illness.

The claimant received a written warning for attendance December 10, 2018. She was absent due to properly reported illness February 21 and February 22, 2018, and February 28, 2018; she was absent March 15 and March 16, 2018, because her son attempted suicide; she was

absent April 2, 2018, because she did not have any heat in her house; she was absent due to properly reported illness April 23 through April 27, 2018, June 11, 2018, August 16, 2018, August 20 and August 21, 2018, October 1, 2018, November 7, 2018 and November 13 through November 23, 2018. She was approved for FMLA November 20, 2018.

On March 26, 2019, the claimant received a final written warning after being absent due to properly reported illness December 5 through December 7, 2018, and March 18 through March 20, 2019.

On April 15, 2019, the claimant and a co-worker received written warnings for not getting along at work.

On April 16, 2019, the claimant called the employer and reported she would not be in because she did not feel well and was also upset about the reprimand she received the previous day. The employer called the claimant later that day and notified her that her employment was terminated due to excessive unscheduled absenteeism.

#### **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.

With the exception of three occurrences in March and April 2018, the claimant's absences were due to 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 are allowed.

**DECISION:**

The May 3, 2019, 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