

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**COURTNEY S ANDERSON**  
Claimant

**APPEAL NO: 20A-UI-06451-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETHANY MANOR INC**  
Employer

**OC: 05/17/20**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 11, 2020, 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 August 7, 2020. The claimant provided a telephone number prior to the hearing but was not available at that number when called for the hearing. Nathan Winkel, Human Resources Coordinator and Laura Severson, Director of Life Enrichment, 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 life enrichment aide for Bethany Manor from June 26, 2019 to May 12, 2020. She was discharged for excessive absenteeism and tardiness.

The claimant has endometriosis and the employer attempted to work with her on the resulting attendance issues caused by her illness. The employer's attendance policy assesses one point for a full day absence and one-half point for an incident of tardiness. It has a seven-minute grace period.

The claimant was absent July 1, July 5 and July 22, 2019; she was tardy July 23, July 27, July 29 and July 30, 2019; she was absent August 1, 2019; and she was tardy August 2, 2019. The employer issued the claimant a verbal warning August 5, 2019. She was absent August 22, 2019; she was tardy September 16, October 11, November 2, November 14, November 17, November 25 and December 4, 2019. The employer made an accommodation for the claimant's health condition allowing her to be up to two hours tardy three occasions per month beginning December 11, 2019. The claimant was absent December 14, December 15, December 19, 2019 and January 1, 2020. The employer issued her a written warning January 2, 2020. She was tardy January 7, January 14 and January 23, 2020, all of which were covered by the claimant's accommodation. The claimant was absent January 26, 2020. On

January 29, 2020, the employer issued the claimant a final written warning for attendance. The claimant was tardy February 3 and February 10, 2020. The employer implemented a new attendance policy effective February 10, 2020, and the claimant started over with a clean attendance record.

The claimant was tardy February 14, 2020; she was absent February 25 through February 27, March 3, March 5 and March 7, 2020. On March 11, 2020, the employer began COVID-19 precautions and if an employee had a temperature or any symptoms of the virus she was removed from the schedule for seven days. On March 17, 2020, the claimant reported she had a fever and cough and was off work through March 24, 2020. She was tardy April 3, 2020. She called in and said she had a fever and a cough April 15, 2020, and was off work through April 20, 2020. She called in and said she had a fever May 10, 2020.

The employer stated the “vast majority” of the claimant’s absences occurred after she initially said she would be tardy but would be there and repeatedly pushed her arrival time back and then not come in at all making it virtually impossible to find replacement workers. The employer terminated the claimant’s employment May 12, 2020, because she was not reliable.

The claimant has not claimed or received benefits since her separation from this employer.

#### **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).

The claimant had an exceptionally poor attendance record even with the accommodation the employer made for her and the fact it wiped her attendance record clean February 10, 2020.

However, 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 June 11, 2020, 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

August 17, 2020  
Decision Dated and Mailed

je/sam