

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDY L HACKER-BOSTER
Claimant

APPEAL NO. 13A-UI-11886-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

**OC: 09/29/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mindy Hacker-Boster (claimant) appealed a representative's October 18, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Central Iowa Hospital Corporation (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 15, 2013. The claimant participated personally. The employer participated by Lindsay Schuman, Human Resources Employee Relations Business Partner, and Manager of Cardiovascular Services Telemetry. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 4, 2002, as a part-time unit clerk. The claimant signed for receipt of the employer's handbook. The handbook states that an employee will be terminated if she accumulates seven occurrences in a six-month period.

The claimant properly reported her absence due to viral meningitis on April 7, 2013. She provided a doctor's note to cover her absence and received one occurrence. The employer issued the claimant a warning for attendance on May 5, 2013. The employer notified the claimant that further infractions could result in termination from employment. On June 5, 2013, the claimant properly reported her absence due to illness and received another occurrence. The employer issued the claimant a warning for attendance issues on June 5, 2013. The employer notified the claimant that further infractions could result in termination from employment. The claimant properly reported absences on June 21, July 12, 2013, and

August 22, 2013 for illness or personal issues and received three occurrences. She was tardy on July 15 and 24, 2013, and received .5 occurrences each. The employer issued the claimant a warning for attendance issues on August 29, 2013. The employer notified the claimant that further infractions could result in termination from employment.

On September 21, 2013, the claimant was driving to work when her back gave out. Her co-worker took her from her car to the work place in a wheelchair. She properly reported her absence and was taken immediately to the emergency room. The physician restricted her from working to September 30, 2013. The claimant provided the doctor's note to the employer. This absence was the claimant's seventh occurrence. On October 1, 2013, the employer terminated the claimant for having seven occurrences in a six-month period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred September 21 through 30, 2013. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's October 18, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs