

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAWN R BRUNETTI

Claimant

APPEAL NO: 19A-UI-06210-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC

Employer

OC: 01/13/19

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 29, 2019, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2019. The claimant participated in the hearing. Daphne Strief, Recruiter, 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 customer service representative for Palmer Companies last assigned at Coop Financial Services from April 8, 2019 to July 12, 2019. Her employment was terminated due to excessive absenteeism.

The employer's attendance policy states that if an employee accumulates more than two absences or incidents of tardiness in a four-week period it is excessive. If an employee is going to be absent or tardy she is directed to contact the employer who will contact the client.

On April 9, 2019, the claimant left one hour early to go to Marshalltown because her dad was in the hospital; on April 15, 2019, the claimant was absent due to properly reported illness; on May 3, 2019, the claimant left at 11:00 a.m. because she was not feeling well; on May 13, 2019, the claimant emailed the employer she would not be in due to illness. The employer asked if she was going to the doctor and to get a note if she did. The claimant replied that she called the client as well. On May 14, 2019, the claimant emailed the employer that she was ill and would not be at work. The employer responded asking if she went to the doctor and when she would be back and the claimant did not respond. On May 23, 2019, the claimant was absent due to car problems; on May 28, 2019, the claimant was absent because her father was in the emergency room. The claimant was absent with acute bronchitis July 8, 9, 11 and 12, 2019. She was not scheduled July 10, 2019. The claimant had a doctor's note covering her absence and emailed the employer and the client to notify each of her absence. The employer did not receive the emails and on July 12, 2019, the client directed the employer to end the claimant's assignment. The claimant did not receive any warnings about her attendance and did not know

her job was in jeopardy. It was her understanding that unless she was absent three or more consecutive days she did not need a doctor's note.

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.

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 July 29, 2019, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn