

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LORRY R KOHLS**

Claimant

**APPEAL NO: 19A-UI-07041-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL COMM HOSPITAL**

Employer

**OC: 08/04/19**

**Claimant: Appellant (4)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 26, 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 September 27, 2019. The claimant participated in the hearing. The employer provided the name of a witness prior to the hearing but that witness was not available at the time of the hearing and did not participate in the hearing.

**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 communications specialist for Central Community Hospital from February 26, 2015 to August 1, 2019. On March 7, 2019, the claimant was mauled by a dog. The claimant was granted FMLA but was still unable to return to work at the conclusion of that leave and consequently the employer granted her additional time off. At the time the employer's extension of the claimant's leave ran out the claimant still needed further surgeries. The claimant was placed on long-term disability until August 1, 2019, and when that was exhausted and the claimant was not able to return to work without restrictions and had other surgeries scheduled, the employer terminated the claimant's employment.

The claimant was released with restrictions August 5, 2019, and had an additional surgery August 20, 2019, from which she has not been release to return to work.

**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 but is not able and available for work with the exception of the two weeks ending August 17, 2019.

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. *Casper 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 or injury, no final or current incident of unexcused absenteeism or misconduct has been established and no disqualification is imposed.

The second issue is whether the claimant is able and available for work as required before she would be eligible for benefits. The claimant was not able and available to work until the two weeks ending August 17, 2019, when she was released to work part-time with a five-pound weight limit. While she was not able to perform her previous job she could perform some type of work and therefore was able and available until her surgery August 20, 2019, from which she has not been released. Therefore, the claimant is able and available for work the two weeks ending August 17, 2019.

#### **DECISION:**

The August 26, 2019, reference 02, decision is modified in favor of the claimant. The claimant was discharged from employment for no disqualifying reason and is able and available for work for the two weeks ending August 17, 2019. Benefits are allowed for those two weeks, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn