

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DESTINY MILLER**  
Claimant

**APPEAL NO: 12A-UI-09060-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Destiny Miller (claimant) appealed an unemployment insurance decision dated July 18, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from the Central Iowa Hospital Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2012. The claimant participated in the hearing. The employer participated through Caitlyn Troendle, Supervisor and Amanda Banks, Human Resources Business Partner. Employer's Exhibits One and Two and Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 employed as a part-time hostess from June 22, 2011 through June 26, 2012. She was discharged from employment due to violation of the employer's attendance policy. The final incident occurred on June 23, 2012 when the claimant went home early due to illness. She received written warnings for attendance on January 27, March 19 and May 3, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 26, 2012 for 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. See 871 IAC 24.32(7).

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). However, absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence for which the claimant was discharged was due to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The unemployment insurance decision dated July 18, 2012, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs