

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREY WASHBURN
Claimant

APPEAL NO: 14A-UI-05552-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELDRIDGE FAMILY DENTISTRY
Employer

OC: 04/27/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2014, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 19, 2014. The claimant participated in the hearing. Dr. Julie Daniels, Co-Owner, 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 part-time registered expanded function dental assistant for Eldridge Family Dentistry from July 22, 2011 to May 1, 2014. She was discharged for excessive absenteeism.

The employer testified the claimant was absent several times over the course of her employment. The employer does not use a point or occurrence based attendance policy and a reported absence without authorization or an excuse may be cause for dismissal. The employer testified it requires patients to give a 48-hour notice and expected employees to do the same because when one of the dentists were there with a patient but without an assistant, the employer could not treat patients.

The employer did not keep track of the claimant's absences but stated it could have discharged her after her first three months when the claimant had only missed one hour of work but then her attendance worsened. The claimant was absent for two and one-half weeks with bronchitis and that was the "last straw" for the employer. The claimant's absences due to illness included March 17 through 20, 2014, and after she returned from her lengthy illness she was absent March 24, 2014, because she was tired and stated she needed a nap. The employer considered the matter further and met with the claimant April 17, 2014, and notified her it was terminating her employment effective May 1, 2014.

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 § 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.

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.

Iowa Admin. Code r. 871-24.32(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.

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.

The employer did not keep track of the claimant's absences and consequently could not testify about when she was absent beyond March 17 through March 20, 2014 and March 24, 2014. It stated the "last straw" was when the claimant was absent due to properly reported illness, bronchitis, for two and one-half weeks, but then it waited until April 17, 2014, to meet with the claimant to notify her it was terminating her employment due to attendance effective May 1, 2014. While the employer was trying to be kind by waiting to discharge the claimant, its decision to wait took the claimant's last absence, after she had returned from a lengthy illness and stated she needed a nap, out of the realm of a current act of misconduct. Had the employer kept records of the claimant's absences and the reasons for those absences, issued warnings to the claimant about her attendance, and discharged the claimant in a timely manner, she might have been disqualified from receiving benefits for excessive absenteeism. The last absence stated by the employer was March 24, 2014. It waited three weeks to meet with her about her attendance and then waited another two weeks to make her termination of employment effective.

Because the final absence was related to properly reported illness, the claimant did not receive any documented warnings, and no final or current incident of unexcused absenteeism has been established, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 20, 2014, reference 01, decision is affirmed. 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/pjs