

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER L FINK
Claimant

APPEAL NO. 12A-UI-04921-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 03/18/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the April 19, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 22, 2012. Claimant participated. Employer participated through human resources coordinator, Janice Foote. Employer's Exhibit 1 was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a CNA in Red Oak from March 21, 2011 and was separated from employment on March 19, 2012. She was recorded as a no-call/no-show on March 15, 2012. Claimant saw her name crossed out when looked at the schedule on March 14 since she was in med aide training. Lynn Stanley DON told her she could not have any more med aide training until her attendance improved. No one told her she was placed back on the schedule for March 15. She had no written warnings but was verbally warned by assistant DON Amber Nelson about her attendance. Previous absences were related to a car accident on March 8, which Stanley approved; tardiness because she forgot to clock in on January 12, 2012, September 25, 2011, and September 1, 2011. On September 12, 2011 her grandmother was dying and Nelson approved her leaving early. Her grandmother died about 15 minutes after claimant left the building. The funeral was on September 16, 2011 was the funeral and she brought in an obituary to the employer.

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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, since the claimant was not aware she was placed back on the schedule she had a good reason for the absence. Because the employer has failed to establish a final or current incident of unexcused absenteeism which establishes work-connected misconduct, no disqualification is imposed. Benefits are allowed.

DECISION:

The April 19, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css