

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CARRIE L HOLCOMB
Claimant

APPEAL NO: 18A-UI-08994-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07/29/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 16, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 17, 2018. The claimant participated in the hearing. Kellie Horch, Human Resources Director, 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 CNA for Good Samaritan Society from December 29, 2016 to July 31, 2018. She was discharged due to a final incident of absenteeism that occurred July 28, 2018, when the claimant failed to report for her on-call assignment.

The employer's attendance policy states employees will receive a written warning for accumulating four absences within a three month rolling period of time; a final written warning for accumulating eight absences within a six month rolling period of time; and will be discharged for accumulating 12 absences within a 12 month rolling period of time.

The claimant was absent due to properly reported illness January 27 and February 3, 2017; she left early to take her son to the emergency room February 28, 2017; she was absent due to properly reported illness March 4 and April 5, 2017, she was absent April 26, 2017, because her grandmother died; she was absent June 21, 2017, to take her son to the emergency room; she was absent due to properly reported illness July 21, August 30, and September 27, 2017; she was absent because she had a flat tire October 18, 2017; and she was absent due to properly reported illness December 6, 2017, January 29, March 5, April 1, April 30, May 4, May 28 and July 6, 2018.

The claimant was scheduled to work on-call Saturday, July 28 and Sunday, July 29, 2018. She notified the employer early in the week she needed to drop her truck off to be worked on and could not find a replacement worker for July 28, 2018. The mechanic told her she had to pick her truck up by noon on July 28, 2018, or wait until Monday. The claimant would have missed her Sunday on-call shift and Monday regularly scheduled shift if she waited to get her truck until Monday. The employer called her to work July 28, 2018, but the claimant did not have a ride to work. The employer terminated the claimant's employment July 31, 2018, after she worked July 29 and July 30, 2018.

The employer issued the claimant a written warning March 8, 2017 and a final written warning October 18, 2017.

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.

While the claimant accumulated 20 absences between January 22, 2017, and July 28, 2018, 15 of those absences were properly reported incidents of illness; two were the result of the claimant having to take her son to the emergency room; one occurred because her grandmother died; one happened because she had a flat tire; and the final absence occurred when she could not make it to her on-call shift and still pick up her truck so she was placed in the untenable position of missing one on-call shift or missing an on-call shift and a regularly scheduled shift if she could not pick her truck up until Monday at noon. The claimant made the least disruptive call in that situation. Because the vast majority of the claimant's absences were due to properly reported illness with five other life situations sprinkled in as well, the administrative law judge

cannot conclude the claimant's unexcused absences of taking her son to the emergency room twice, the death of her grandmother, a flat tire and a missed on-call shift rise to the level of disqualifying job misconduct, as that term is defined by Iowa law. Under these particular circumstances, 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 are allowed.

DECISION:

The August 16, 2018, 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/scn