

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERESA A GETTING
Claimant

KWIK SHOP INC
Employer

APPEAL 15A-UI-08229-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/10/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the July 13, 2015, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2015 in front of Administrative Law Judge Kristin A. Collinson. Claimant participated. Employer participated through Dawn King, Store Manager. Employer's Exhibit One was entered and received into the record.

The entire record was reviewed by Administrative Law Judge Teresa K. Hillary, including listening to the entire hearing on September 24, 2015.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant manager through May 5, 2015 when she stopped working. She was discharged on June 15 when she was released to return back to work. The claimant admitted herself to the hospital on May 6, 2015 for suicidal depression. She was in the hospital from May 6 through May 14.

Right before the claimant admitted herself to the hospital she was interviewed by a deputy sheriff on May 6 for allegations of animal neglect. The employer read the article in the local newspaper and assumed the claimant had been lying about being hospitalized and that she had instead been arrested and incarcerated. The employer's own documents indicate that they believe that the claimant was incarcerated from May 6 through May 27. She was not. An arrest warrant was issued on May 22 and the claimant turned herself in on May 26 and was released on May 27. The claimant was not released to return to work by her medical provider until June 15, 2015. She kept in touch with the employer by calling her store manager. She made application for both FMLA and short-term disability benefits. As of the date of her hearing, her application for short-term disability was still pending. The claimant was physically and mentally

not able to work from May 5 through June 15. She did not lie to her employer about the reason for her absence.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant did not abandon her job. She returned and offered her services as soon as released by her medical provider to do so. The employer discharged her when she offered to return to work with no work restrictions. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The July 13, 2015, (reference 02) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge for
Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

tkh/kac/css