

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA A NELSON**  
Claimant

**APPEAL NO. 08A-UI-01543-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARTELS LUTHERAN HOME IMC**  
Employer

**OC: 01/13/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Bartels Lutheran Home Inc. (employer) appealed a representative's February 8, 2008 decision (reference 01) that concluded Barbara A. Nelson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 28, 2008. The claimant participated in the hearing. Brenda Schmadeke, Wendy Leisinger and Carol Brown appeared on the employer's behalf. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 24, 2006. The claimant worked as a full-time CNA and CMA. At the time of hire, the employer gave the claimant a copy of the employer's attendance policy. The attendance policy informs employees that after the third attendance incident, the employer starts progressive discipline and an employee receives a verbal warning. The fourth incident results in a written warning. The employer gives the employee a three-day suspension at the fifth attendance incident. The sixth attendance incident results in the employee's discharge. When an employee is unable to work as scheduled, the absence is not counted as an attendance occurrence if the employee finds a replacement.

The employer started the claimant's progressive discipline for attendance issues on January 12, 2007. On July 31, 2007, the claimant received a three-day suspension. Before July 31, 2007 discipline step could drop off, the claimant could not have any attendance issues for one year. The claimant's absences occurred as a result of the claimant being ill and unable to work.

On January 3, 2008, the claimant was ill and unable to work. She notified the employer that she was ill and would be going to the doctor. After the claimant went to her doctor for upper

respiratory problems, she went home and came down with flu-like systems. The claimant was too ill to move.

The claimant returned to work on January 7 and no one said anything to her about her absences. Between January 4 and 15, the employer reviewed the claimant's history to make sure they treated her fairly in conjunction with all the other employees. On January 15, 2008, the employer discharged the claimant for violating the employer's attendance policy. The claimant's January 3 and 4 absences counted as one attendance occurrence, but these absences were her sixth attendance occurrence.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. In accordance with the employer's attendance policy, the claimant violated the employer's policy. The law, however, specifically states that being ill and unable to work does not constitute work-connected misconduct. Since the claimant properly notified the employer when she was ill and unable to work, the evidence does not establish that she intentionally disregarded the employer's interest or that she intentionally failed to work as scheduled. The claimant did not commit work-connected misconduct. Therefore, as of January 13, 2008, the claimant is qualified to receive unemployment insurance benefits.

#### **DECISION:**

The representative's February 8, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. These reasons do not constitute work-connected misconduct. As of January 13, 2008, the claimant is qualified to receive

benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css