

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISON FINCH

Claimant

WELLS ENTERPRISES INC

Employer

APPEAL NO: 13A-UI-09123-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06-23-13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 29, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 11, 2013. The claimant participated in the hearing. Justin Dodge, Human Resources Business Partner; Nicholus Knuth, Transportation Supervisor; and Toni McColl, Employer Representative, 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 yard attendant for Wells Enterprises from July 30, 2012 to March 13, 2013. She was discharged for exceeding the allowed number of attendance occurrences.

The employer implemented a new attendance policy for part-time employees January 17, 2013. Employees with three or fewer absences carried those absences over and employees with more than three absences had any absences that would have placed them above a coaching level on the disciplinary system eliminated. Employees call an automated attendance hot line but do not have the option of stating their absences are due to illness. Five occurrences result in termination.

The claimant had more than five absences at the time of the change in policy and the employer dropped her down to three for December 21, 23 and 24, 2012, and gave her a coaching because she was ill and called in to report she would not be at work on those dates. The claimant was also ill March 5 and 6, 2013, and properly reported her absence to the attendance line. She also found replacement workers for each shift when she was absent. The employer received the attendance report and Human Resources Partner Justin Dodge noticed the claimant's March 6, 2013, absence on March 12, 2013, at which time he notified Transportation

Director Nicholas Knuth she had exceeded the allowed number of attendance occurrences. On March 13, 2013, Mr. Knuth notified the claimant her employment was terminated for violating the employer's attendance policy.

The claimant suffers from Post-Traumatic Stress Disorder (PTSD). All of her absences, except for one when she had the flu for three days (dates unknown) were attributable to PTSD. The employer was aware the claimant was in the military and had been diagnosed with PTSD at the time of hire. When the claimant experiences PTSD relapses she suffers from depression that prevents her from leaving her bed except to use the restroom.

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:

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.

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 as are absences due to properly reported illness. In this case, at least the claimant's final two absences were attributable to her PTSD diagnosis, if not the previous three absences counted by the employer. While she did not provide a note from her physician stating that was the reason for her last absences, even when given the opportunity to do so by the Administrative Law Judge who left the record open for the claimant to provide said note, the claimant was absent due to a properly reported illness and did find replacement workers for the shifts she missed. The claimant appeared deliberately evasive and elusive as a witness, especially when cross-examined by the employer's representative, and while that was quite frustrating, the behavior may have been due in part to her PTSD. Consequently, because the final absence, as well as her previous absences, were related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The July 29, 2013, 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/css