

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALICIA LEWIS
Claimant

APPEAL NO: 18A-UI-07983-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC
Employer

OC: 06/24/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 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 August 16, 2018. The claimant participated in the hearing. Makenna Kreikemeier, Human Resources Specialist, 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 on-call CNA for Grapetree Medical Staffing, Inc. from April 9, 2015 to June 13, 2018. She was discharged for attendance.

The employer does not have a set attendance policy. Employees self-schedule and must contact the employer if unable to work their shift. Employees are encouraged but not required to provide doctor's notes for their absences.

On January 18, 2018, the claimant called and stated she was going to the emergency room with a migraine and provided a doctor's note for her absence; on January 22, 2018, she had a doctor appointment but did not provide a note; on February 22, 2018, she was out of town due to a family emergency; on February 24, 2018, she had a migraine but did not provide a doctor's note; on March 28, 2018, she had a migraine but did not provide a doctor's note; on March 30, 2018, she was a no-call/no-show; on April 9, 2018, she was ill and provided a doctor's note; on May 5, 2018, the claimant had a seizure but did not provide a doctor's note; on June 6, 2018, she was ill and provided a doctor's note; and on June 13 and June 16, 2018, she was gone out of state due to her father's Alzheimer disease getting worse. The employer terminated the claimant's employment June 13, 2018.

The employer placed the claimant on a six month probationary period June 1, 2017, due to attendance and when her attendance did not improve the employer extended the probationary period by three months. On May 11, 2018, the claimant received a final verbal warning. On May 30, 2018, she received a final amended probation.

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 did accumulate a significant number of absences, her absences were either due to illness or family emergency. Because the final absence was related to a family emergency, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The July 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