IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TONI L EGINOIRE
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL NO. 10A-UI-17006-S2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/14/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Toni Eginoire (claimant) appealed a representative's December 10, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Broadlawns Medical Center (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 9, 2011, in Des Moines, Iowa. The claimant participated personally. The employer participated by Shelly Farrell, Human Resources Coordinator. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibits One, Two, Three, and Four were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 4, 2000, as a full-time dental assistant working from 8:00 a.m. to 4:00 p.m. The claimant signed for receipt of the employer's policies on October 4, 2000. In January 2010, the employer revised the Attendance/Tardiness Policy. The January 2010, employer's absence policy indicates that ten unscheduled absences could result in termination. After ten unexcused absences the employer issued the claimant a written warning for absenteeism. The claimant was not terminated because the claimant's supervisor had not kept records of the claimant's absences. The employer notified the claimant that further infractions could result in termination from employment.

On November 18, 2010, the claimant requested time to see her physician. The employer's supervisor approved the claimant's request for time off on November 18, 2010. The claimant went to her physician. The claimant's physician excused the claimant from work from November 18 through 21, 2010. The claimant called her supervisor and the Human Resources Coordinator after her appointment on November 18, 2010, and indicated she had a medical

excuse to be absent from work. The Human Resources Coordinator told the claimant she was terminated for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of

absence was a properly reported illness which occurred on November 18, 2010. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's December 10, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs