

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOLLY ROSENBALM
Claimant

APPEAL NO: 13A-UI-01610-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01-06-13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 30, 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 March 11, 2013. The claimant participated in the hearing. Connie Sevier, DON; Seina Danielson, Assistant DON; and Alyce Smolsky, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

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 full-time CNA for Care Initiatives from October 26, 2012 to December 26, 2012. She was discharged from employment due to a final incident of absenteeism that occurred December 25, 2012.

The employer's policy states that any no-call/no-shows during an employee's 90-day probationary period will result in termination and the claimant acknowledged she was aware of the policy (Employer's Exhibits One and Two). The schedule is made approximately one month in advance and a second schedule is produced weekly to inform employees what floor they are assigned to for each day of that week. If an employee wants a specific day off or cannot work a day she is scheduled she is required to talk to assistant DON Seina Danielson. On December 25, 2012, the claimant was scheduled to work from 6:00 a.m. to 6:00 p.m. She failed to call the employer or show up for work. Other employees attempted to call the claimant but she did not respond until Ms. Danielson called her and the claimant returned her call. Ms. Danielson was called into work to cover for the claimant. Ms. Danielson asked the claimant if she knew she was scheduled to work and the claimant stated she was aware she was supposed to work that day but she was in Des Moines. Ms. Danielson told the claimant she should have made arrangements to have her shift covered and the claimant stated she

requested that she not be scheduled on holidays during her probationary period at the time of hire because probationary employees are not paid time and one-half. Ms. Danielson said her request had not been granted and she would talk to DON Connie Sevier about what disciplinary action would be taken against the claimant. After discussing the situation with Ms. Danielson, Ms. Sevier called the claimant December 26, 2012, and notified her that her employment was terminated (Employer's Exhibit One).

The claimant testified she knew she was scheduled to work December 25, 2012, but never planned to work that day and did not talk to the employer about the situation or try to find a replacement or trade her hours. She initially stated she did not know she would lose her job but the policy regarding one no-call/no-show during probation resulting in termination and finding a replacement worker had been explained to her. She said her husband told her she needed to call the employer to report her absence before 6:00 a.m. December 25, 2012, but she was too tired to do so and she knew she would lose her job.

The claimant was absent November 7, 2012, because she suffered a non-work-related ankle injury. Her absence was properly reported to the employer on that date. She left at approximately 1:00 p.m. December 21, 2012, after being notified her father had been taken to the hospital. The claimant was not warned about her attendance during her tenure with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant admits she knew in November 2012 that she was scheduled to work December 25, 2012, but did not make any arrangements with the employer or ask any of her co-workers to work for her or trade shifts with her to cover her absence. Her husband also reminded her she needed to call the employer and report her absence December 25, 2012, but said she was too tired to do so. She acknowledges that she was aware of the employer’s policy that any probationary employee with a no-call/no-show will face immediate termination.

Generally, one no-call/no-show absence does not rise to the level of excessive unexcused absenteeism or disqualifying job misconduct, especially when the claimant does not have a poor attendance record. In this case, however, the claimant knew that by not making arrangements with the employer or any of her co-workers to cover her shift her employment would be terminated because she was a probationary employee and one no-call/no-show absence results in termination. The claimant’s actions have all the hallmarks of a voluntary leaving of employment because she intentionally failed to call or show up for work during her probationary period, even though her husband reminded her to call the employer that morning, and she knew that would result in the termination of her employment.

Under these circumstances, the administrative law judge concludes the claimant’s conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer’s interests and the employee’s duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 30, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to intentional, disqualifying, job misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css