

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER STURGILL**  
Claimant

**APPEAL NO. 10A-UI-17570-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 10/17/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Allen Memorial Hospital (employer) appealed an unemployment insurance decision dated December 21, 2010, reference 01, which held that Jennifer Sturgill (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2011. The claimant participated in the hearing. The employer participated through Abbey Meister, Human Resources Business Partner; Maynard Murch, Lab Director; and Wendy Bienemann, ED Lab and Compliance Manager. Claimant's Exhibit A was admitted into evidence. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time medical assistant in the lab department from November 14, 2005 through October 19, 2010. She was discharged for excessive absenteeism with a final incident on September 30, 2010 when she was absent due to a torn eye. The claimant received a first level warning for attendance on December 13, 2008, when she had six absences. She received a second level written warning on September 29, 2009, when she again had six absences. A third level warning was issued on December 31, 2009 for seven absences in 2009. This was a final warning and warnings remain on an employee's record for 12 months.

The claimant missed 13 days of work in 2010 but seven days were excused, since the claimant had migraines and had approved Family Medical Leave for migraines. The other absences were also due to illness and properly reported but were unexcused. The employer made the decision to discharge the claimant after her sixth absence on September 30, 2010. The claimant was scheduled to be discharged on October 13, 2010, but it did not occur, since she

was absent due to illness from October 13, 2010 through October 15, 2010. These absences were not considered in her termination.

### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged on October 19, 2010 for excessive absenteeism with a final incident on September 30, 2010, when she was absent due to illness. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). 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 claimant's final absence was due to properly reported illness and is therefore not considered misconduct under the unemployment insurance laws. Inasmuch as the employer has not established a current or final act of

misconduct, benefits are allowed. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The unemployment insurance decision dated December 21, 2010, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw