

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HOLLAND D LUDWICK**  
Claimant

**APPEAL NO: 19A-UI-07639-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IMMANUEL**  
Employer

**OC: 09/01/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 20, 2019, 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 October 21, 2019. The claimant participated in the hearing. Lisa Schmokel, Human Resources Business Partner; Dan Hermesen, Rehabilitation Services Supervisor; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Six 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 restorative aide for Immanuel from February 9, 2015 to August 26, 2019. He was discharged for attendance issues and violation of the employer's behavior in the workplace policy.

On January 20, 2019, the claimant texted his supervisor at 9:20 p.m. stating he was taking Monday, January 21, 2019, off work. The employer requires 24 to 48 hours' notice so it can cover an employee's duties as physical therapy has to be pulled over to cover for a restorative aide. The employer issued the claimant a verbal warning in writing January 21, 2019 (Employer's Exhibit Four).

On April 8, 2019, the claimant received a written warning after it was reported by a patient that the claimant was belching loudly in the gym, failed to cover confidential information when he left his computer screen or a hard copy of the information, was violating the employer's dress code by wearing shorts, stained cloths and letting his buttocks hang out, and leaving a patient on a bike without supervision (Employer's Exhibit Five). The claimant signed the warning without making comments in the section provided to do so.

On July 16, 2019, the claimant received a final written warning for being on his phone for long periods of time and wearing ripped and stained clothing July 8, 2019 and for being on his phone for long periods of time as observed by the clinical practice manager July 15, 2019 (Employer's Exhibit Six). The claimant signed the warning without writing any comments (Employer's Exhibit Six).

The claimant texted his supervisor late August 22, 2019, that he would not be in August 23, 2019, his first day back after vacation, because he was ill due to inhaling "toxic lithium battery smoke that I was exposed to at the airport" after his wife's suitcase caught on fire (Employer's Exhibit Three). The employer did not believe the claimant's explanation and consequently met with human resources and the employer made the decision based on the claimant's "overall history of nonchalance towards rule/regulations of the gym including not giving an adequate 48 hour notice for paid time off (PTO), dress code violations, multiple complaints from other staff and participants about the claimant's overall behavior, use of phone for non-business use during business hours, and potential HIPAA violations for uncovered patient names" to terminate the claimant's employment (Employer's Exhibit Three).

### **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 had several policy and procedure violations cited by the employer in considering his termination, the final act was his absence August 23, 2019, which was due to illness. Prior to that his last warning occurred July 16, 2019, and those other issues cannot be

considered current acts of misconduct. Although the employer prefers to be notified of an absence 48 hours in advance, that is not usually possible when reporting an illness and consequently the administrative law judge finds the claimant's last absence was properly reported.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The September 20, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn