

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L MOORE

Claimant

APPEAL NO: 11A-UI-15509-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 10/23/11

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 23, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Lori Welch, the human resource director, and Gwen Musick, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time night shift CNA in February 2011. When the claimant was hired, she learned about the employer's attendance policy. The policy informed the claimant that five or more unscheduled absences in a rolling six-month period amounts to excessive absenteeism. The employer gives an employee a counseling or verbal warning when an employee has four absences within six months. The employee receives a written warning at six absences and a final written warning at seven absences in six months. The employee may be suspended or discharged if the employee has eight absences in six months.

On June 9, 2011, the claimant received a final written warning for unscheduled absences. After the claimant received the final warning, she understood that if her unscheduled absences did not improve, she could be suspended or discharged.

The claimant notified the employer on June 23 and 27 that she was ill and unable to work. The claimant provided a doctor's note for these absences. The claimant notified the employer on August 6 that she was unable to work because her son had a high fever, which she was trying to bring down. On August 19, the claimant had strep and notified the employer she was unable

to work. The claimant gave the employer a doctor's statement verifying she had been unable to work. On September 13, the claimant notified the employer she was unable to work because her child had fallen and hurt his head. The claimant gave the employer a doctor's note verifying she had taken her son to the emergency room. On October 5, the claimant notified the employer her child, who had recently undergone abdominal surgery, was vomiting so she was unable to work. On October 8, the claimant did not call or report to work, because she had taken her child to the emergency room. The child underwent a second surgery. The claimant was so upset about her son's condition that she did not think about notifying the employer to report that she unable to work. The employer called the claimant three times during this shift, but she did not answer her phone, because she had turned it off while she was at the hospital. The morning of October 9, the claimant noticed she had messages from the employer. The claimant called and told the employer about the medical emergency her son had the evening of October 8.

The claimant worked as scheduled on October 17. On October 19, the claimant called before her shift to advise the employer she was unable to work. Her child was sick and she had taken him to the doctor. The doctor diagnosed the child's illness and told the claimant she could not work until October 21 because she was contagious. The person who reported the claimant had called in indicated her son was ill and the claimant's husband refused to stay home by himself to take care of their child.

On October 20, Welch called the claimant and discharged her for excessive absenteeism. The claimant did not tell the employer on October 20 she had doctor's statements for her absences in October and that she had been told she could not work October 19 because she was contagious. The claimant assumed Welch had been told the claimant had a doctor's note for her October 19 absence and did not say anything after the employer discharged her for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Based on the information the employer had when deciding to discharge the claimant, the employer established justifiable business reasons for discharging the claimant. With the claimant's personal health concerns in addition to her children's health issues, she was not a dependable or reliable employee. With the exception of October 8, she properly notified the employer when she was unable to work. Even though the claimant did not give the employer a doctor's note for her October absences, her testimony that she had doctor's statements for these absences is credible. The claimant established reasonable grounds for being absent in October. Therefore, the evidence does not establish that she committed work-connected misconduct. As of October 23, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's November 23, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, excessive absenteeism. Even though the claimant continued to be absent for on-going health issues, she did not commit work-connected misconduct. Therefore, as of October 23, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw