

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOVIE A SLECHTA

Claimant

APPEAL NO. 14A-UI-06804-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EVENTIDE LUTHERAN HOME FOR THE
AGED**

Employer

OC: 11/17/13

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 24, 2014 (reference 03) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on July 23, 2014. The claimant did participate. The employer did participate through Connie Thompson, Human Resources Representative, and Karen Beam, Environmental Services Supervisor. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an environment services aide beginning on January 28, 2014 through May 30, 2014 when she was discharged.

The claimant was hired to work in the environmental services area with no promise that she could or would be promoted or moved to any other job or work area of the facility. The employer sometimes allows employees to take certified nurse's training and on some occasions will pay for it. The claimant asked to be considered for the certified nurse's training but after evaluation by the facility Director of Nursing, was told the employer would not pay for her to attend class. The claimant decided she wanted to attend the class anyway and signed up and paid to take the class beginning on May 27, 2014. The employer told her she could not have the three-week period off work as they needed her to work because another employee was off work due to having a new grandchild.

The claimant had been given a copy of the employer's attendance policy and new that if she reached zero points under that policy, she would be discharged.

The claimant went to her first day of class on May 27 and did not report for work. She did not have permission to miss work. During a class break, the claimant twisted her ankle and sought medical treatment. She had already made the decision to pursue her classes and not to attend work. She was a no-call/no-show for work the next two days, bringing her total points below zero and resulting in her discharge. The claimant was given the opportunity to present her medical excuse from her doctor but never did so.

The employer was under no obligation to let the claimant have time off work because she wanted to attend school. The claimant was obligated to properly report her absences, but did not properly report her absences on May 27, 29 and 30. Even if properly reported by an employee, an absence is not automatically considered excused.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

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). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The claimant asked for three weeks off work to attend the certified nurse's training. Her request was denied. The employer was under no obligation to give the claimant time off to take the class nor were they obligated to pay for the claimant's class. While the claimant wanted to better herself, the employer was not obligated to pay for that or to allow her time off that interfered with the needs of the business.

The claimant knew she did not have permission to miss work on May 27, but chose to attend class. Her absence was unexcused. The claimant did not report her following two absences nor provide medical notes indicating she could not attend work. The claimant was discharged due to excessive absenteeism and benefits are denied.

DECISION:

The June 24, 2014 (reference 03) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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