

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRAE GHANI
Claimant

APPEAL NO. 11A-UI-08873-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05-29-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 30, 2011, reference 02, 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 July 28, 2011. The claimant participated in the hearing. David Mollenhoff, human resources coordinator, and Lucie Hengen, employer representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two 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 housekeeping aide for Care Initiatives from May 5, 2010 to August 24, 2010. The claimant went to the emergency room August 19, 2010, due to illness. She was scheduled to work August 20, 2010, at 7:00 a.m. She called the employer between 8:30 and 9:00 p.m. August 19, 2010, to report she would not be at work August 20, 2010, because she was sick. The employer did not have a record of her call and listed her absence as a no-call, no-show. She worked August 21, 2010, although she still did not feel well. She overslept August 22, 2010, and missed her 7:00 a.m. shift. She believed the medication she was taking caused her to oversleep but did not provide a reason for not calling the employer to report her absence when she did wake up at 11:00 a.m. The employer's policy states that two no-call, no-show absences result in termination and the claimant was discharged August 24, 2010 (Employer's Exhibit One). The claimant was aware of the policy (Employer's Exhibit Two).

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:

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(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). While the claimant was a no-call, no-show August 22, 2010, she credibly testified she did call the employer the evening of August 19, 2010, to report she was ill and would not be at work August 20, 2010. The employer stated that the call at that time of night would have been taken by the nurses' station, staffed by 7 to 12 nurses. Under those circumstances, it is possible that one of the presumably busy nurses may have neglected to complete the absence form and the claimant did call in as she testified. The only established no-call, no-show occurred August 22, 2010. Consequently, the administrative law judge concludes that one no-call, no-show does not constitute excessive unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 30, 2011, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw