

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICOLE S WHITE**  
Claimant

**CARE AMBULANCE LLC**  
Employer

**APPEAL 19A-UI-05575-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/16/19**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On July 12, 2019, the claimant filed an appeal from the July 10, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2019. Claimant participated. Employer participated through human resources manager Shelby Garcia-Patton. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 7, 2018. Claimant last worked as a full-time paramedic. Claimant was separated from employment on June 21, 2019, when she was terminated.

Employer has an attendance policy requiring employees to notify their supervisor of their absence via telephone at least two hours prior to the shift. The policy prohibits notification via text message and email. Claimant was aware of the policy. However, claimant frequently communicated with her supervisor, Tammy, by text message throughout the last six months of her employment. Claimant notified Tammy of attendance issues by text message and Tammy never warned claimant she should not do so.

Claimant was scheduled to work on June 11, 2019, at 7:00 a.m. On June 10, 2019, claimant was feeling ill. Claimant sent a text message to her manager, Tammy, asking if she could find someone to cover for her the next day. Tammy did not see the text message and did not respond. At 3:00 a.m., claimant sent another text message to Tammy stating she was feeling even worse and would definitely not be able to come to work the next day. The next morning at 7:50 a.m., Tammy replied and asked claimant what was going on. That afternoon, claimant and Tammy had a telephone conversation in which claimant explained she was having health issues.

Claimant was next scheduled to work on June 14, 2019. On June 13, 2019, at 10:00 p.m., claimant sent a text message to Tammy stating that her health condition was worsening and that she was going to go to the doctor the next morning and would be absent. Claimant was absent on June 14, 2019. Claimant saw a doctor and got a note excusing her from work from June 11 through June 22, 2019. Claimant submitted the note to employer promptly.

On June 21, 2019, employer terminated claimant's employment.

On June 26, 2018, employer gave claimant a written warning regarding attendance issues. Claimant had not had any unexcused absences from June 26, 2018, until June 11, 2019.

### **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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. Absences due to properly reported illness are excused, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant was absent on June 11 and 14, 2019. Claimant's absences were due to illness, which is a reasonable ground for absence. Employer contends the absences should be considered unexcused because claimant reported the absence to her supervisor by text message instead of by telephone, as directed by the employer's attendance policy. Whether claimant had notice that she was improperly reporting the absences is questionable given that her supervisor regularly allowed her to communicate about attendance issues by text message without warning or ramification. But even if claimant had notice her absences were improperly reported, two unexcused absences in one year of employment is not considered excessive.

Employer failed to establish claimant was terminated for excessive, unexcused absenteeism or any other act of misconduct.

**DECISION:**

The July 10, 2019, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

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Christine A. Louis  
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Decision Dated and Mailed

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