

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CAROL S CHEBUHAR**  
Claimant

**APPEAL NO: 19A-UI-00928-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONROE CARE CENTER INC**  
Employer

**OC: 01/06/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 1, 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 February 18, 2019. The claimant participated in the hearing. Payten Steffen, Administrator, participated in the hearing on behalf of the employer.

**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 RN/charge nurse for Monroe Care Center from October 18, 2018 to November 20, 2018. She was discharged for attendance issues.

The employer's attendance policy requires employees call their supervisor at least 30 minutes before the start of their shift to report an absence. The claimant worked the 6:00 a.m. to 6:00 p.m. shift. On October 29, 2018, the claimant called the employer and stated her house had been broken into and she would not be at work. On October 30, 2018, the claimant called the employer at 6:00 a.m. and said she was ill and would not be in. The claimant notified the employer she had jury duty in October, November and December 2018. There were no trials in October 2018 but on November 14, 2018, the claimant had jury duty and reported for work at 1:15 p.m. On November 19, 2018, the claimant was absent due to illness and notified the employer she would not be in at 5:20 a.m. The employer called the claimant November 20, 2018, and terminated her employment due to her attendance.

**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.

With the exception of the claimant's October 30, 2018 absence, the claimant's absences were properly reported. The claimant tried to work October 30, 2018, but because of stomach flu she realized at the last minute she would be unable to go to work and notified the employer. Because the claimant's final absence on November 19, 2018, was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The February 1, 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