

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**YOUJAY S REEVES**  
Claimant

**DEVELOPMENTAL SERVICES OF IOWA**  
Employer

**APPEAL 15A-UI-01878-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/18/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2015. The claimant participated. The employer participated through Katie Bennett. Employer Exhibit One was admitted.

**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: The claimant was employed full-time as a direct support specialist and was separated from employment on December 17, 2014, when she was discharged.

The claimant was scheduled to work a double shift on Saturday, December 13, 2014. On December 12, the claimant left work early and notified her manager, Katie Bennett, that she was feeling weak and dehydrated. The claimant was told to bring in a doctor's note to cover her absence. The claimant went to the hospital and was diagnosed with a sinus infection and excused from work until Monday, December 15, 2014. The claimant did not call or show for her December 13 double shift. The claimant's phone was broken and her husband was gone for the weekend so she could not borrow his phone. She had also informed Ms. Bennett she was sick the day before. The employer left a message for the claimant when she did not arrive at work. On December 17, 2014, the claimant was discharged for violating the employer's policy, which views a no-call/no-show as evidence of immediate termination. Prior to separation, the claimant had no prior warnings for her attendance.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, 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.

Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. In this case, the claimant had no prior warnings or attendance occurrences that contributed to her separation and only one no-call/no-show on December 13, 2014. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. The employer has failed to establish a final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The February 5, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs