

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERVEILLE T KALONJI
Claimant

CARE INITIATIVES
Employer

APPEAL 18A-UI-11024-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the October 31, 2018, (reference 01) that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 28, 2018. Claimant participated. Employer participated through Kari Gerst, Administrator; Amanda Knight, Director of Nursing; Amanda Rivera of Talx and was represented by Caroline Semer of Talx UCM Services. Official notice was taken of agency records. Employer's exhibit one was admitted into the record. Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed initially full time as a certified nurse's aide beginning on June 16, 2015. She chose to go to casual status on January 4, 2017 so she could attend school. The claimant had no attendance issues prior to September 2018 when her Grandfather became ill and passed away.

The claimant then became ill with bronchitis in early October. She last worked on October 4. On that day she was so ill one of the residents refused to let her provide care as she was fearful of catching the claimant's illness.

The claimant was to work on October 8 at 2:00 p.m. She properly notified the employer on October 7 that she could not work on October 8, due to illness. The employer has a no-fault attendance policy where even absences due to properly reported illness are still counted against an employee under their attendance policy.

The claimant had agreed at some point via text message to cover a shift on October 9. When she was a no-call no-show for the shift, the employer contacted her. During the conversation with Ms. Knight the claimant reported that she was too ill to work and would be going to the doctor. The claimant was scheduled to work on October 10. On October 9, Ms. Knight knew the claimant would not be into work on October 10 due to her illness. Claimant went to the doctor on October 9 where she was given a slip taking her off work until October 11. The claimant never gave a copy of her doctor's note to the employer. The claimant's final absence on October 10 was due to illness that was properly reported to the employer.

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.

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 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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because

the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The October 31, 2018, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs