

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA LIVINGSTON

Claimant

APPEAL NO: 09A-UI-16169-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER

Employer

OC: 09-13-09

Claimant: Respondent (1)

Section 96.5-2-a - Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2009, 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 December 2, 2009. The claimant participated in the hearing. Rick Barrett, Legal Resources Manager, 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 communications clerk for Broadlawns Medical Center from July 22, 2008 through September 17, 2009. She was discharged for excessive unexcused absenteeism. The employer's no-fault attendance policy provides that six unscheduled absences within 12 months results in a supervisory counseling, seven to nine unscheduled absences result in disciplinary action up to and including termination, and ten unscheduled absences result in termination. However, five unscheduled absences within the first six months of employment could also result in termination. The employer's witness testified the claimant was discharged after she accumulated 12 absences but did not provide all the dates of those absences. The claimant went to work October 30, 2008, but became ill and was sent home. The employer told her the absence would not count against her if she was sent home. She was sick with pneumonia for three days ending November 27, 2008, and five days ending December 6, 2008, but reported her absences. The claimant was absent December 23, 2008, but does not remember the reason for her absence. She had the flu for two days ending February 6, 2009 and the employer told her not to report to work. The employer issued the claimant a written warning February 9, 2009. The claimant missed two days of work ending March 31, 2009, and three days of work ending April 10, 2009. The reason for these absences is unknown but they resulted in a second written warning April 21, 2009. The employer indicated the claimant was advised on her evaluation on July 13, 2009, that her attendance was below acceptable standards. A clarification memo on attendance was issued August 5, 2009, in

which the employer said that an employee's record would be wiped clean after 12 months. The employer's witness testified that the claimant had continued unexcused absences after August 5, 2009, so she was discharged September 17, 2009. No specific dates were provided for those absences. The claimant testified she only had one absence between August 5, 2009 and September 17, 2009, and that was due to the stomach flu. She believed she only had eight or nine absences.

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(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.

The claimant was discharged for absenteeism. 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 employer failed to provide information as to the claimant's final absences. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The October 15, 2009, reference 01, 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/css