

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDY WOLFF**  
Claimant

**APPEAL NO. 11A-UI-05838-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT MEDICAL CENTER**  
Employer

**OC: 04/03/11**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brandy Wolff filed an appeal from a representative's decision dated April 29, 2011, reference 01, which denied benefits based on her separation from Covenant Medical Center (Covenant). After due notice was issued, a hearing was held by telephone on May 26, 2011. Ms. Wolff participated personally. The employer participated by Missy Santman, Director of Human Resources, and Randy Williams, Patient Access/Medical Support Staff Manager. Exhibits One through Seven were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Wolff was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wolff was employed by Covenant from May 14, 2001 until April 6, 2011. She worked approximately 32 hours each week as a clinic receptionist. She was discharged because of her attendance. She received written warnings regarding her attendance on January 29 and September 17, 2010.

The attendance issues that triggered the discharge began on March 15, 2011 when Ms. Wolff properly reported the intent to be absent due to illness. She was 2 minutes late on March 18; 5 minutes late on March 30; 12 minutes late on April 4; and 5 minutes late on April 5. These infractions caused her to exceed the employer's attendance standards and, therefore, she was discharged on April 6, 2011.

In March of 2010, Ms. Wolff was diagnosed with narcolepsy. The condition causes her to have difficulty getting started in the morning. Her doctor certified her eligibility for leave under the Family and Medical Leave Act (FMLA). The doctor certified that, because of her difficulties in the mornings, she should be allowed to use FMLA on an intermittent basis to cover tardiness. Her FMLA coverage began April 6, 2010 and expired on March 14, 2011. During this time, the employer allowed her to use FMLA to cover tardiness in reporting for work. Because the time

Ms. Wolff missed after March 14 was not covered by FMLA, it counted against her attendance. Attendance was the sole reason for the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wolff was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

In determining whether a period of absence is excused, the focus is on the reason for the absence, not whether it was covered by available leave time. Ms. Wolff's absence of March 15, 2011 is excused as it was due to illness. The tardiness of March 18, March 30, April 4, and April 5 is likewise excused. Ms. Wolff's doctor certified that she might need to use FMLA to cover tardiness and the employer had allowed her to do so when she had FMLA time remaining. Based on the doctor's certification, it is concluded that the tardiness was due to the narcolepsy. Inasmuch as it was due to matters beyond her control, the tardiness is excused.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. It was certainly the employer's prerogative to discharge Ms. Wolff because of its attendance policy. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated April 29, 2011, reference 01, is hereby reversed. Ms. Wolff was discharged by Covenant but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs