

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GAIL I BUBKE
Claimant

MID-STEP SERVICES INC
Employer

APPEAL 15A-UI-06176-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/03/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 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 July 2, 2015. The claimant participated. The employer elected not to participate and submitted a written statement in lieu of appearance and it was admitted as Employer Exhibit One. Claimant Exhibit A was also 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 third shift registered nurse and was separated from employment on March 10, 2015, when she was discharged for excessive absenteeism.

The employer has an attendance policy which issues points for attendance incidents. An employee is discharged at 12 points. If the claimant was to call off from work, she needed to contact her supervisor or second shift manager on duty. The claimant was issued disciplinary warnings, including a two day suspension on February 5, 2015 for being at 10 points, and a one-day suspension on January 23, 2015 for being at 8 points. The majority of the claimant's absences were due to illness, ranging from complications with her blood sugar as a diabetic, to chest pain to having dry sockets. The claimant testified she would call off each shift due to illness to notify her management prior to her absence, and had not requested FMLA prior to her discharge. The final incident occurred when the claimant called off work on March 9, 2015 due to pancreatitis. The claimant inquired about FMLA that day, upon learning she would be ill for some time, and was later discharged that day.

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 § 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(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.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. In this case, the evidence presented is that the claimant had several absences attributed to illnesses, which she properly called off. The administrative law judge is cognizant of the impact the claimant's absences had on the employer, especially as a third shift employee. However, the employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the majority of absences, including the final one, were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The May 19, 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs