

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARITA BUCKALEW
Claimant

APPEAL NO: 12A-UI-06655-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05-13-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 28, 2012. The claimant participated in the hearing. Jessica McDyer, administrator; Kim VanderSloot, business office manager; and David Williams, employer's representative, 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 CNA for Care Initiatives from July 11, 2006 to May 12, 2012. The employer uses a no-fault attendance policy and employees are discharged upon reaching ten unscheduled absences in a rolling 12-month period. The claimant was absent due to properly reported illness and provided a doctor's excuse June 6, 2011, and received one point; absent due to unknown reasons June 27, 2011, and received one point; absent due to properly reported illness with a doctor's note August 15, 2011, and received one point; absent due to a properly reported earache October 1, 2011, and received one point; absent due to stomach problems with a doctor's note January 7, 2012, and received one point; absent due to stomach problems with a doctor's note January 12, 2012, and received one point; absent because of back pain with a doctor's note February 27, 2012, and received one point; absent for unknown reasons April 4, 2012, and received one point; and was absent due to not feeling well and being hospitalized May 8, 2012, and received one point. On May 11, 2012, the claimant's boyfriend called the employer on her behalf and said the claimant was ill. The employer told him to inform the claimant that if she did not find a replacement worker, provide another doctor's note, or show up for work, her employment would be terminated. Her physician did not have any appointments available until May 14, 2012. The claimant was experiencing stomach problems as she had been in the hospital and off work due to properly reported illness May 8 and 9, 2012, and found a replacement to work for her May 10, 2012, and she agreed to work for that employee May 11, 2012, but was still sick. She tried to call four or five other employees to

see if they could work for her May 11, 2012, but none were able to do so and the claimant assumed that because she could not get in to see her doctor that day, could not find a replacement, and could not work, her employment was terminated as stated in the phone call. Consequently, she did not call or go to work May 12, 2012, and the employer considered her to have quit her job even though it would have terminated her employment had she shown up for work May 12, 2012. The claimant received a written warning April 19, 2012, after accumulating eight points. The employer prepared a final written warning for the claimant's absence May 8, 2012, when she was in the hospital, but the claimant did not work again and did not receive the final written warning.

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(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.

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). While the claimant violated the employer's attendance policy, her absences were due to properly reported illnesses, most accompanied by a doctor's excuse. The claimant was hospitalized May 8 and 9, 2012, and her doctor provided her a note excusing her from work May 8 through 10, 2012. She still did not feel well May 10, 2012, and found a replacement worker to cover her shift that day but was unable to work, find a replacement, or provide a doctor's note immediately for her absence May 11, 2012. After the conversation her boyfriend had with the employer May 11, 2012, it was not unreasonable for the claimant to believe her employment was terminated, as indeed was the case, as she would have been discharged had she gone to work May 12, 2012. Under these circumstances, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The May 31, 2012, reference 01, decision is reversed. 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/kjw