

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMIE K. CAPAZO**

Claimant

**APPEAL NO: 17A-UI-08429-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES OF NE IA INC**

Employer

**OC: 07/23/17**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 10, 2017, 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 September 5, 2017. The claimant participated in the hearing. Monty Gritzner, Director of Operations and Facilities and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**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 donation center attendant/plant employee for Goodwill Industries of Northeast Iowa from January 29, 2016 to July 11, 2017. She was discharged following an absence July 6, 2017.

On July 6, 2017, the claimant called the employer at 6:15 a.m. for her 7:00 a.m. shift and stated she would be 15 to 20 minutes late and if she was not there within that time frame she would not be in (Employer's Exhibit One). She did not call the employer back or report for work that day (Employer's Exhibit One). On July 7, 2017, the claimant called the employer and stated she had a doctor's note excusing her from work from July 6 through July 9, 2017, and she would bring it when she came in for work Monday, July 10, 2017. The claimant reported for work July 10, 2017, and submitted her doctor's note (Employer's Exhibit One). She worked July 10, 2017, and until her first break July 11, 2017, at which time the employer notified her that her employment was terminated.

On May 19, 2016, the employer issued the claimant a written warning because she repeatedly worked past the end of her shift despite being told the employer had a budget and she could not do so (Employer's Exhibit One). On November 17, 2016, the claimant received a one day suspension for repeatedly working after the end of her shift (Employer's Exhibit One). The

claimant was working one hour to one hour and 15 minutes past the end of her scheduled shift. On February 2, 2017, the claimant received a three day suspension because she was three minutes tardy January 1, 2017; four minutes tardy January 2, 2017; five minutes tardy January 3 and 5, 2017; one minute tardy January 6, 2017; two minutes tardy January 10, 2017; 12 minutes tardy January 12 and 15, 2017; six minutes tardy January 16, 2017; ten minutes tardy January 17, 2017; four minutes tardy January 18, 2017; ten minutes tardy January 19, 2017; two minutes tardy January 20, 2017; five minutes tardy January 23, 2017; and ten minutes tardy January 25, 2017 (Employer's Exhibit One). On May 22, 2017, the claimant received a five day suspension after she left her work station without permission April 27, 2017 (Employer's Exhibit One).

Approximately two weeks before the claimant's termination of employment, the employer met with her and explained if she had another unexcused absence her employment would be terminated but at that time it stated it was giving her the option of resigning or improving her performance and attendance and accepting another chance. The claimant assured the employer she wished to continue her employment.

### **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.

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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant did call the employer July 6, 2017, and stated she would be 15 to 20 minutes late and if she was not there by that time she would not be at work that day. Although the employer disputes that she added she would not be in if she was not there in 15 to 20 minutes, the

manager she spoke to no longer works for the employer and was not available to testify or refute the claimant's testimony. Consequently, the claimant's first-hand testimony carries more weight than the employer's second hand testimony. Even assuming the claimant did tell the employer if she was not there in 15 to 20 minutes she would not be there, she should have called the employer back to state she would not be in to work when she made that determination. As it was, she did an inadequate job of notifying the employer of her absence. That said, however, the claimant did produce a doctor's excuse and this was an isolated incident of poor judgment with regard to reporting an absence and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law.

While the employer was justified in discharging the claimant given her history of attendance violations and failure to follow the employer's instructions, because the final absence was related to a properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The August 10, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn