

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>MARVELLA LINDSEY</b> Claimant  <b>MERCY HOSPITAL</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO. 08A-UI-06628-S2T</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 06/15/08 R: 03</b> <b>Claimant: Appellant (2)</b></div>
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Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Marvella Lindsey (claimant) appealed a representative's July 15, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Mercy Hospital (employer) for excessive unexcused absenteeism and tardiness after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 5, 2008. The claimant participated personally. The employer participated by Kristy Hearn, Housekeeping Manager, and Stephanie Henkenius, Compensation and Benefits Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 11, 2005, as a full-time housekeeper. The claimant signed for receipt of the employer's handbook on July 11, 2005. The employer issued the claimant written warnings for absenteeism on February 29, March 13, May 29 and June 6, 2008. Most of the claimant's absences were due to properly reported illness or injury. She always reported her absence by leaving a message at approximately 5:00 a.m. on the employer's answering machine.

The employer issued the claimant written warnings for absenteeism on February 29, March 13, May 29 and June 6, 2008. The absences were almost all due to properly reported illnesses. One absence was for a family emergency. On one occasion the claimant was told by her supervisor to leave early. Later the employer said the claimant left early without permission.

On June 9, 2008, the claimant left a message at 5:00 a.m. for the employer stating she would be late because she had been with her new grandchild who was sick in the hospital. The employer was not told the claimant left a message. Later on June 9, 2008, the claimant went to her doctor. The doctor told the claimant not to return until June 16, 2008. On June 10, 2008, the claimant left a message at 5:00 a.m. for the employer stating she would not be returning to

work until June 16, 2008, because of her doctor's recommendation. The employer was not told the claimant left a message. The claimant did not call in on June 10, 11 or 12, 2008. The employer sent the claimant a certified letter of termination on June 12, 2008. The claimant did not receive the letter.

On June 16, 2008, the claimant notified the employer that due to the flood she could not make it to work. The employer terminated the claimant for excessive absenteeism.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment but the claimant's absences were due to illness and properly reported. Those absences cannot be considered misconduct. Of the claimant's last five scheduled working days, she was absent due to a properly reported illness for three of those days. The last absence was due to the flood. These absences do not constitute job-related misconduct. The employer has failed to provide sufficient evidence of misconduct. Benefits are allowed.

**DECISION:**

The representative's July 15, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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