

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETTY J PITCHER**  
Claimant

**APPEAL NO. 12A-UI-12572-VS**

**GENESIS HEALTH SYSTEM**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/23/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated October 10, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 13, 2012, in Davenport, Iowa. The claimant participated personally. The employer participated by Larry Roberson, director of human resources. The record consists of the testimony of Larry Roberson; the testimony of Betty Pitcher; and Claimant's Exhibits A-H.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a health care system. The claimant was hired on February 18, 2008, as a full-time environmental service aide. Her last day of work was September 26, 2012. She was terminated on September 26, 2012, for excessive absenteeism.

The incidents that led to the claimant's termination occurred on September 24, 2012, and September 25, 2012. The claimant was ill and unable to work. The employer's policy required the claimant to call her supervisor to report that she would not be in to work. The claimant followed the policy and called a supervisor. These final two incidents led to the claimant having ten incidents. Under the employer's policy, the claimant was terminated for having reached ten incidents.

## REASONING AND CONCLUSIONS OF LAW:

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See *Higgins, supra*, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence in this case did show excessive absenteeism, but the final two absences were for personal illness that was

properly reported. Personal illness properly reported is considered an excused absence under Iowa unemployment insurance law. That means that the final absence that led to the claimant's termination was not misconduct. Unless the final absence is unexcused, a claimant will not be disqualified from receiving unemployment insurance benefits. Benefits are therefore allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 10, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/bjc