

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORNA L CAMPBELL
Claimant

APPEAL NO. 17A-UI-02855-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/19/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a -- Discharge

STATEMENT OF THE CASE:

Lorna Campbell, the claimant, filed a timely appeal from a representative's decision dated March 7, 2017, reference 01, which denied unemployment insurance benefits, finding that she was discharged from work on February 16, 2017 for excessive unexcused absenteeism after being warned. After due notice was provided, a telephone conference hearing was held on April 5, 2017. Claimant participated. Employer participated by Ms. Alyce Smolsky, Equifax Hearing Representative, and witness, Mr. Anthony Casco, Dietary Services Manager. Employer's Exhibits 1, 2, and 3 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Lorna Campbell was employed by Care Initiatives from September 14, 2015 until February 19, 2017, when she was discharged from employment. Ms. Campbell was employed as a full-time Dietary Aide and was paid \$8.76 per hour. Her immediate supervisor was Mr. Anthony Casco, Dietary Manager.

Ms. Campbell was discharged after she exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Under the policy, employees who accumulate ten attendance infraction points during a one-year period are subject to discharge. Employees are assessed one infraction point for each absence. Infraction points roll off after one year. Employees are not assessed infraction points if they provide a doctor's note verifying their need to be absent from work.

The final absence that caused Ms. Campbell's discharge took place when the claimant called off work on February 16, 2017, because she had injured her hands at work. Because of the solutions that she had used while performing her duties, the claimant's hands were swollen, cracked, and painful. Claimant properly reported her absence by calling in that morning, prior to the beginning of her work shift.

During the months leading up to her termination from employment, Ms. Campbell had called off or left work early on approximately 12 occasions. Each absence was due to illness and was

properly reported. Ms. Campbell was unaware that her absences could be considered excused if she provided a doctor's note. Ms. Campbell maintains that the employer did not accurately document the dates that she was absent or left work early and that she had been warned fewer than three times prior to being discharged.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.5(2)a. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See IAC 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires considerations of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See IAC 871-24.32(8). Absences related to issues of personal responsibility such as transportation or over-sleeping are considered unexcused. Absences related to illness are considered excused as long as the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness or leaving early is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Campbell did follow the employer's attendance policy by properly reporting her impending absences. The evidence also establishes that the majority, if not all, of the claimant's absences were due to illness or injury and therefore are excused for the purposes of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for unemployment insurance benefits. Because the final absence for which the claimant was discharged and the majority of her absences while employed were related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification from benefits is imposed.

DECISION:

The representative's decision dated March 7, 2017, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/rvs