

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE L NOLAN
Claimant

APPEAL NO. 14A-UI-03355-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 02/16/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alegent Health (employer) appealed a representative's March 18, 2014, decision (reference 03) that concluded Stephanie Nolan (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 21, 2014. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Phyllis Farrell, Unemployment Insurance Consultant; Brianne Suing, Human Resources Business Partner; and Denean Carlson-Rozic, Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 October 27, 2003, and at the end of her employment she was working as a full-time resource specialist. The claimant signed for receipt of the employer's handbook on October 27, 2003. The handbook indicates an employee can be terminated if she accumulates ten attendance points. The claimant was absent from work because her daughter was in the hospital overnight, her mother had a heart attack, her mother had open heart surgery, the claimant's doctor found a lump in the claimant's breast, personal issues, the claimant was ill, the claimant took her daughter to get her daughter's glasses. The claimant's previous supervisor told the claimant the absences for her mother's open heart surgery, her mother's heart attack, and discovering the lump would not be counted in the claimant's total of attendance points. The claimant saw those points listed on her warnings and she was again told the points would be removed.

On January 21, 2014, the nurse practitioner at work diagnosed the claimant with a fever and sent the claimant home from work. On January 22, 2014, the claimant properly reported to the employer she still had a fever and could not work. On January 24, 2014, the employer

terminated the claimant for excessive absenteeism. The points for her mother's open heart surgery, her mother's heart attack, and discovering the lump were included in the eleven-point attendance total.

The claimant filed for unemployment insurance benefits with an effective date of February 16, 2014. The employer participated personally at the fact-finding interview on March 17, 2014, by Phyllis Farrell.

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(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.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on January 22, 2014. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's March 18, 2014, decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs