

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AMANDA C VRIEZE
Claimant

APPEAL NO: 18A-UI-00855-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

OC: 12/24/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 17, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 12, 2018. The claimant participated in the hearing. Kathy Anderson, Human Resources; Jackie Schmidt, Manager; and Michele Hawkins, Employer Representative participated in the hearing on behalf of the employer. Employer's Exhibits One through Eleven were 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 clerk sales employee for Diamond Jo Worth, LLC from August 22, 2016 to December 28, 2017. She was discharged for violating the employer's attendance policy.

The employer has a no-fault point-based attendance policy and employees are discharged upon reaching 12 attendance points (Employer's Exhibit Ten). If an employee is absent for consecutive days due to illness she accrues one-half point for every day after the first day. If an employee has perfect attendance for 90 consecutive days one point drops off. Points also drop off after one year.

The claimant was absent due to illness October 12, 2016, and received one point; she was absent due to illness November 9, 2016, and received one point; she was absent due to illness November 28, 2016, and received one point; she was absent due to illness November 29, 2016, and received one-half point; she was absent due to a family emergency February 22, 2017, and received one point; she was absent due to illness March 1, 2017, and received one point; she was absent due to illness March 21, 2017, and received one point; she was absent due to illness May 7, 2017, and received one point; she was absent due to illness June 5, 2017, and received one point; she was absent due to illness August 30, 2017, and received one point; she

was absent due to a family emergency September 19, 2017, and received one point; she was absent due to an accident October 6, 2017, and received one point; one point dropped off October 12, 2016; one point dropped off November 9, 2017; she was absent due to illness November 28, 2017, and received one point; one point dropped off November 28, 2017; and one-half point dropped off November 29, 2017. The claimant sprained her ankle before work December 11, 2017, and was on crutches. The employer did not allow her to work and she received one-point December 11, 2017, and one-half point December 12 and December 13, 2017. The claimant was on intermittent FMLA due to a back condition December 15, 2017 and December 16, 2017, but did not receive any attendance points for those dates. The claimant called in and stated she was ill December 17, 2017, but it was not recorded by the employer's third party FMLA administrator as an FMLA absence. The employer reexamined the claimant's attendance record to ensure it had not incorrectly classified an absence that should not have been counted against the claimant because of FMLA and notified the claimant December 28, 2017, that her employment was terminated for exceeding the allowed number of attendance points.

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.

While the claimant believed she called in her absence December 17, 2017, as FMLA, neither the employer's third party administrator or the employer recorded it as such. Whether covered by FMLA or not, however, the absence was called in and attributable to the claimant's ongoing back problem. Consequently, because the final absence was related to properly reported

illness, no final or current incident of *unexcused* absenteeism has been established. (Emphasis added). Therefore, benefits are allowed.

DECISION:

The January 17, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn