

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDY L HARRIS**  
Claimant

**APPEAL NO. 12A-UI-04421-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA PHYSICIANS CLINIC MEDICAL**  
Employer

**OC: 02/19/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated April 13, 2012 reference 02, that held the claimant was not discharged for misconduct on February 17, 2012 and which allowed benefits. A hearing was held on May 10, 2012. The claimant participated. Ashley Martz, clinic administrator, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began employment on April 28, 2008. She became a full-time Clinical Assistant II at the Penn Ave Internal Medicine Clinic on July 6, 2011 and last worked on February 17, 2012. The claimant received the employer attendance policy, which provides for progressive discipline from a Level 1 first offense corrective action to a Level 3 final warning and with discharge at Level 4. The attendance policy is that seven occurrences within a six-month period is grounds for termination. A multiple consecutive-day absence period is considered one occurrence.

Administrator Martz was on maternity leave when claimant was issued a Level 3 discipline final warning on December 27, 2011 for being at six occurrences. When Martz returned on February 17, 2012, she noted claimant had January 23/24 and February 15-17 absences coupled with tardiness up to January 25. Martz discharged claimant on February 20 for reaching the Level 4/employment termination stage due to attendance issues that met or exceeded the seven occurrences.

Claimant was treated for pneumonia by an employer clinic doctor, which covered her February 15-17 absenteeism period. She believes her most recent tardy to work on January 25 was within the employer seven-minute grace period. The employer counts every absence against an employee regardless of the reason for missing work.

**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(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.

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 administrative law judge concludes that the employer failed to establish a current act(s) of misconduct in the discharge of the claimant on February 20, 2012, for excessive "unexcused" absenteeism.

The employer has the right to establish and enforce its attendance policy that leads to employment termination. The Iowa Employment Security law requires that absenteeism must be for non-excusable reasons in order to deny unemployment.

The claimant was most recently absent in February due to properly reported absences, as she was treated at the employer's clinic. The most recent tardy occurred about a month prior to discharge and it was within the employer's grace period. There is no recent (current act) attendance policy violation that is for other than an excusable reason (illness), such that job disqualifying misconduct is not established.

**DECISION**

The representative's decision dated April 13, 2012, reference 02, is affirmed. The claimant was not discharged for a current act of misconduct in connection with employment on February 20, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/kjw