

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA A HORKSTROM**  
Claimant

**APPEAL NO. 08A-UI-09726-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA JEWISH SENIOR LIFE CENTER**  
Employer

**OC: 08/31/08 R: 02  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 6, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 5, 2008. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through Dee Dolezal and Karol Rousch. Employer's Exhibit 1 (6 pages) was received.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a part-time CNA and worked from September 11, 2007 until August 25, 2008, when she was discharged. She called in to report her absence due to car problems at about 11 p.m. on August 24 for her 11 p.m.-to-7 a.m. shift. Employer treated this as a no-call, no-show absence and terminated her employment according to employer's policy that considers one no-call, no-show absence a voluntary termination from employment. (Employer's Exhibit 1, pages 1, 2, 3 and 6)

**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 § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Since claimant did not have three consecutive no-call, no-show absences as required by rule in order to consider the separation job abandonment, the separation was a discharge and not a quit.

Iowa Code § 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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer's absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an

unexcused absence. However, claimant did report this absence. Although the absence is considered unexcused as it relates to transportation, one unexcused absence is not disqualifying, since it does not meet the excessiveness standard. Benefits are allowed.

**DECISION:**

The October 6, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw