

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY A JACOBS**  
Claimant

**APPEAL NO. 12A-UI-02939-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY PHYSICIAN SERVICES INC**  
Employer

**OC: 02/05/12  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kimberly A. Jacobs filed a timely appeal from an unemployment insurance decision dated March 14, 2012, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on May 16, 2012, with Ms. Jacobs participating. Human Resources Director Julia Hawkins and Clinic Manager Karina Servousek participated for the employer, Mercy Physician Services, Inc.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Kimberly A. Jacobs was employed as a licensed practical nurse by Mercy Physician Services, Inc. from August 23, 2010, until she was discharged February 3, 2012. She was discharged because of poor attendance. The final absence occurred on January 23, 2012. Ms. Jacobs was absent because of a sinus infection. She properly reported the absence to the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). While excessive unexcused absenteeism is misconduct, absence due to a medical condition is not held against an employee for unemployment insurance purposes if the absence has been properly reported to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

The evidence in this record establishes that the final incident leading to discharge was not an act of misconduct, since the absence was due to illness and had been properly reported. No disqualification may be imposed, even if some of the claimant's prior absences had been unexcused.

**DECISION:**

The unemployment insurance decision dated March 14, 2012, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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