

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYSON CLARK
Claimant

APPEAL NO: 16A-UI-08942-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEYSTONE NURSING CARE CENTER INC
Employer

OC: 07/24/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 8, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 2, 2016. The claimant participated in the hearing. Jennifer Hamlin, Administrator, participated in the hearing on behalf of the employer.

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 part-time home health aide for Keystone Nursing Care Center from February 18, 2006 to July 13, 2016. She was discharged for attendance issues.

Under the employer's attendance policy, part-time employees receive two days of sick leave per year. The third absence results in a verbal warning, the fourth absence results in a written warning, and the fifth absence generally results in termination.

On March 27 through March 30, 2016 the claimant was hospitalized with a bacterial infection and provided a doctor's note. On May 22, 2016, the claimant injured her back at home and was absent May 22 and May 23, 2016. She provided a doctor's excuse for that absence. On June 15 and 16, 2016, the claimant reported she went to the emergency room. When the claimant reported her absence June 16, 2016, the employer warned her about her absenteeism, placed her on a 60-day probationary period, and told her any further attendance issues in the next 60 days would result in her termination. On July 11, 2016, the claimant called the employer after seeing a few clients and stated she was ill and could not finish her shift. The employer told her it would count as an absence and the claimant indicated she understood. On July 13, 2016, the employer asked the claimant to come to the office but the claimant stated she already had plans and did not have enough gas to get there. The employer then asked her to call the office and she did so around 4:20 p.m. at which time the employer notified the claimant her employment was terminated because her July 11, 2016, absence violated the terms of her probationary period.

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 § 96.5-2-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.

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.

Because the final absence July 11, 2016, was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The August 8, 2016, reference 01, decision is affirmed. 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/pjs