

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA SHELLEY
Claimant

APPEAL NO: 10A-UI-03824-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY PET VETERINARY CENTER INC
Employer

OC: 01-17-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 3, 2010, 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 April 26, 2010. The claimant participated in the hearing. Dr. Jennifer Mathis, President/Owner, 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 veterinary receptionist for Family Pet Veterinary Center from March 24, 2009 to June 20, 2009. She was discharged for excessive absenteeism. She was absent due to illness and provided a doctor's excuse April 13 and April 24, 2009; she was absent without providing a reason April 27, May 1 and May 8, 2009; she left early May 9 and was absent May 11, 2009, to spend time with her family; she was absent due to illness and provided a doctor's excuse May 15, 16, 17 and 18, 2009; she left early due to illness June 1, 2009; she was absent due to illness and provided a doctor's note June 3, 2009; she left early due to illness June 8, 2009; she worked a partial day due to illness June 10, 2009; and she was absent due to illness without providing a doctor's note June 15 and June 18, 2009, and the employer terminated her employment. She never received a verbal or written warning about her attendance but all employees were told during a training session June 11, 2009, of the importance of the team and needs of the office.

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:

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.

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). While the claimant did have an excessive number of absences, 12 of her 17 incidents of absenteeism or not working a full day, were due to properly reported illness as the claimant has a depressed immune system which causes her to be ill more than an average employee. The employer was aware the claimant had "some" health problems at the time of hire but it does not appear the claimant made it clear how extensive her illness was and how that would affect her attendance. Although the claimant should have been more forthcoming about her health condition at the time of hire, the employer failed to warn the claimant about her attendance and notify her that her job was in jeopardy due to her attendance. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and therefore benefits must be allowed.

DECISION:

The March 3, 2010, 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

