

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA R LACKEY
Claimant

I-LOAN IOWA INC
Employer

APPEAL 16A-UI-09429-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2016. The claimant, Sara Lackey, participated, and witness Teresa Deems also testified on claimant's behalf. The employer, I-Loan Iowa, Inc., did not answer at the telephone number provided for the hearing when called at the hearing time, and it did not participate in the hearing.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an assistant manager, from February 25, 2014, until on or about April 2, 2016, when she was discharged.

Claimant last reported to work on April 2, 2016. Claimant stopped reporting to work at that time due to serious illness. She had been in contact with the employer that week and notified the employer that she was not feeling well. The following week, claimant went into the hospital. She stayed in contact with her direct supervisor during this time. Additionally, claimant's mother contacted the employer to request FMLA paperwork and to report on the ongoing absence. The employer told her that the company did not offer FMLA and preferred to handle these situations in-house. Deems testified that she spoke with the employer two or three times, and no one ever told her that claimant's job was in jeopardy. Deems was told claimant did not need to worry about her job, and the employer gave her no indication that she should be calling in daily to report that claimant remained in the hospital.

On April 14, claimant was discharged from the hospital. She contacted both her supervisor, Dina, and the regional manager, Mike. Mike told claimant that she could return to work with a doctor's approval, but he let her know that the employer had already filled her position. The employer paid claimant through May 13, 2016. She never turned in a note to Mike because Mike told her that her position had been filled while she was in the hospital. Claimant was trying to keep her employment and had no intention of leaving her employment. Claimant had no attendance issues in the past, and she had no idea that her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit her employment but was discharged for no disqualifying reason. Benefits are allowed.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Here, claimant stopped reporting to work because of a serious medical issue that required hospitalization. She informed her employer about this, and her mother kept the employer informed during her daughter's hospital stay. Claimant had no intent to leave her employment. Rather, the employer chose to end claimant's employment when it hired someone to replace her while she was in the hospital. Therefore, this case is appropriately analyzed as a discharge from employment, and the employer has the burden of proof to establish claimant was discharged for disqualifying misconduct.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's last absence was related to her hospitalization for a serious medical issue. As claimant's final absence was properly reported illness and for medical reasons, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, any history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The August 19, 2016, (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/