

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ANGELA GRAVES  
142 W WILSON ST  
PRESTON IA 52069-7738**

**COMMUNITY CARE INC  
108 E INDUSTRIAL ST  
DEWITT IA 52742**

**Appeal Number: 06A-UI-07257-ET  
OC: 06-18-06 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 12, 2006, 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 August 3, 2006. The claimant participated in the hearing. Carol Wells, Human Resources Director and Denise Beenk, ICFMR Director, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

#### 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 living assistant for Community Care Inc. from July 1, 2005 to June 22, 2006. She was discharged for exceeding the allowed number of attendance points. The employer has a no-fault policy and employees are discharged after accumulating five points. Employees receive a verbal warning at 0.5 points; a written warning for 1.0 -1.5 points; a one-day suspension for 2.0-2.5 points; a two-day suspension for 3.0-3.5 points; and a three-day suspension for 4.0-4.5 points. Points drop off for every month of perfect attendance. Consecutive days of absence due to illness are assessed one point if accompanied by a doctor's note. On September 9, 30, October 14 and 28, 2005, she received .50 points for tardiness; on November 4, 2005, she received one point for an absence; on November 5, 2005, she received .50 points for tardiness; on November 28 and December 14, 2005, she received one point for absences; on December 17, 2005, she received .50 points for leaving early; on March 20 through March 24, 2006, she received one point for an absence due to illness with a doctor's excuse; on April 9, 2006, she received .50 points for leaving early; on June 17, 2006, she received one point after calling in because her son was ill; and on June 19, 2006, she received one point and was discharged after calling in to report an absence due to her own illness with a doctor's excuse. The claimant received verbal warnings September 1 and September 15, 2005, after accumulating .50 points twice; a written warning October 28, 2005, after accumulating one point; a written warning and one day suspension November 7, 2005, after accumulating two points; a written warning and three day suspension May 10, 2006, after accumulating four points; and was terminated June 22, 2006, after accumulating 6.50 points. The employer planned to terminate the claimant's employment June 19, 2006, but because the claimant was absent it did not notify her of her discharge until June 22, 2006.

#### 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). The claimant did have several absences but most of those absences were due to the illness of herself, her son, or her grandmother. Her last two absences were attributable to the illness of her son June 17 and herself June 19, 2006, for which she had a doctor's excuse. While the employer's attendance policy is a no-fault policy and the claimant was assessed points regardless of whether she had a doctor's note, under state law absences due to properly reported illness are not misconduct and therefore do not disqualify a claimant from receiving benefits. Consequently, because the final absence for which the claimant was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The July 12, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/pjs