

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DIANN C STRONG
Claimant

APPEAL NO: 19A-UI-07089-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IOWA CORP
Employer

OC: 08/11/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 30, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 30, 2019. The claimant participated in the hearing. The employer provided a letter prior to the hearing stating it would not be participating in the hearing.

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 full-time cook for Mercy Health Services from December 10, 2011 to August 9, 2019. She was on FMLA from April 4 through June 2, 2019, due to her own illness. After returning to work the claimant's husband suffered medical issues and was hospitalized and the claimant's psychiatrist took her off work from July 26 through August 9, 2019. The claimant applied for FMLA again but it was denied. When she returned to work August 9, 2019, the employer terminated her employment for excessive absenteeism.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The August 30, 2019, reference 01, decision is reversed. 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/scn