

**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**

**ERIN DEGOEY
PO BOX 314
NEW SHARON IA 50207-0314**

**GRINNELL REGIONAL MEDICAL CENTER
210 – 4th AVE
GRINNELL IA 50112**

**Appeal Number: 06A-UI-07495-ET
OC: 06-25-06 R: 03
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, 4th 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.

(Administrative Law Judge)

(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 17, 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 10, 2006. Deb Nowachek, Human Resources Manager; Dave Ness, Vice-President of Operations; and Vilene Savage, Employee Relations Specialist, participated in the hearing on behalf of the employer. The claimant did not respond to the hearing notice and did not participate in the hearing. 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 full-time housekeeper for Grinnell Regional Medical Center from June 20, 2005 to June 23, 2006. She was discharged from employment due to a final incident of absenteeism on June 21, 2006, when she called in to report an absence related to illness. On February 27 and 28, 2006, the claimant was absent due to a properly reported illness; on March 21, 2006, she called in because of the weather; on March 22, 2006, she went to a dental appointment and did not return or call the employer; on April 1, 2 and 3, 2006, the claimant was a no-call/no-show; on April 4, 2006, she left early without authorization; on April 7, 2006, she was a no-call/no-show; on April 13 and 14, 2006, she was two hours late without authorization; on April 28, 2006, she called in to report she had a flat tire and would be in later but did not show up for work or call back; on April 29 and 30, she was a no-call/no-show but called May 1, 2006, to say she was in the hospital over the weekend; on May 8, 2006, the claimant called at 3:15 p.m. for her 4:00 p.m. shift and stated she was going to the doctor and might be late before calling at 3:30 p.m. to say she had strep throat and would not be at work; on May 9 and 10, 2006, she was absent due to a properly reported illness with a doctor's excuse; on May 25, 2006, she left three and one-half hours early; on June 7, 2006, she left early without authorization; on June 8, 2006, she was absent due to a properly reported illness and had a doctor's excuse; on June 16, 2006, she left early without authorization; and on June 20 and 21, 2006, she was absent due to a properly reported illness. On January 6, 2006, the claimant was placed on an action plan because of her attendance (Employer's Exhibit One). On April 26, 2006, the claimant received a written coaching session, which was not a disciplinary action due to unusual circumstances in her department (Employer's Exhibit One). On May 11, 2006, the employer met with the claimant to discuss a written warning and action plan regarding her attendance. At that time she was told that further instances of absenteeism "may result in further corrective action up to and including termination" (Employer's Exhibit One). On June 23, 2006, the employer terminated the claimant's employment for "acting with disregard to established hospital and departmental policies and procedures" with regard to attendance (Employer's Exhibit One).

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's absences were excessive, many, including the final absence, were due to properly reported illness and as such do not constitute disqualifying job misconduct as defined by Iowa law, regardless of the fact that the employer followed all of their procedures. Consequently, because the final absence for which the claimant was discharged was related to a properly reported illness, no final or current incident of unexcused absenteeism has been established and benefits must be allowed.

DECISION:

The July 17, 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/cs