

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON E STERNER**  
Claimant

**APPEAL NO. 110-UI-01890-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIMPSON MEMORIAL HOME INC**  
Employer

**OC: 07-11-10  
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 21, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2011. The claimant did participate. The employer did participate through, Melissa Hazelwood, director of nursing, and was represented by Chad Thomas, attorney at law. Employer's Exhibits A and B were entered and received into the record.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job 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 certified nurse's aide, full-time, beginning May 3, 2007, through June 30, 2010, when she was discharged. The claimant had been off work due to non-work-related osteoarthritis since the early spring of 2010. As of June 14, 2010, the claimant's treating physician had removed her from work due to her osteoarthritis condition. After consulting with her primary physician, he believed that the claimant would not be able to work any longer as a certified nursing assistant. The claimant believed she could still perform many of her rehabilitation duties even if she could not perform all of her nursing assistant duties. During a meeting on June 30, the claimant told the employer that she was considering retiring but had not made up her mind. The claimant never told the employer that she wanted to quit her job. As of June 30 the claimant had run out of leave time and her 12 weeks of FMLA time had expired. The claimant was discharged by the employer on June 30 because she had run out of leave time. The claimant was released to return to work with a 20-pound lifting restriction by her treating physician on July 22, 2010. At that time, she was told by the employer that they would not accommodate any type of work or lifting restriction. The claimant has applied for social security benefits in an attempt to cover her medication costs. She continues to look for work, as she cannot live on her social security benefits alone.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

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.

The claimant wanted to continue working, albeit within her work restrictions. While her physician opined that she could probably not continue to work as a certified nursing assistant, he did not prohibit her from working completely. The employer chose not to accommodate any of the claimant's work restrictions. Unless the claimant was able to return to work and able to perform all of her job duties by the time her FMLA expired, the employer would not continue her employment. Under these circumstances, the administrative law judge concludes that the claimant did not voluntarily quit her employment but was discharged by the employer when her leave time expired.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for

unemployment insurance benefits related to that separation. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant's inability to work due to her osteoarthritis is not job-connected misconduct. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The October 21, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw