

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JULIE A STRACENER**  
Claimant

**APPEAL NO: 20A-UI-09474-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DM SERVICES INC**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 27, 2020, 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 24, 2020. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate 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 credit analyst for DM Services from April 12, 2004 to March 16, 2020. She was discharged for attendance issues.

The claimant's mother was ill and she had surgery July 1, 2019. The claimant was then involved in a motor vehicle accident and broke her shoulder July 15, 2019. The claimant was on FMLA. She transferred to second shift so she would be able to take her mother to doctor's appointments. She exhausted her FMLA November 1, 2019. The employer sent her a certified letter stating she needed to return to work by November 4, 2019, or her employment would be terminated. As a result, the claimant asked her physician to release her early but she was only released for part-time work and remained in a great deal of pain. Consequently, the claimant left early on occasion and accumulated attendance points. She was placed on probation for attendance December 11, 2019. The claimant worked as much overtime as possible to lower her absence percentage.

The claimant's mother had another surgery in Iowa City March 12, 2020. The claimant reported she was ill March 13 and March 14, 2020, and the employer told her not to come in due to COVID-19 fears and told her the absences would be excused. On Monday, March 16, 2020, the employer terminated the claimant's employment.

The employer requires that employees maintain an attendance percentage below seven percent. The claimant was at 0.6 percent for the 15 years preceding her mother's first surgery July 1, 2019. The claimant never received a written warning regarding her attendance during the last five years of her employment

### **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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(7) provides:

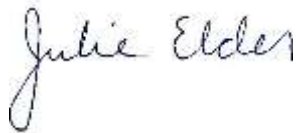
(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the 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 claimant's final absences, March 13 and March 14, 2020, were related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The July 27, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Julie Elder  
Administrative Law Judge

September 28, 2020  
Decision Dated and Mailed

je/sam