

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN MARX
Claimant

APPEAL NO: 16A-UI-05830-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS MENTAL HEALTH CENTER
Employer

OC: 04/24/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 18, 2016, 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 June 10, 2016. The claimant participated in the hearing. Jennifer Kiesling, Office Manager, participated in the hearing on behalf of the employer.

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 support staff for Crossroads Mental Health Center from June 22, 2015 to April 28, 2016. She was discharged for failing to provide the employer with the required paperwork for several consecutive leaves of absence.

The claimant requested time off January 11 through February 22, 2016, because she was having knee replacement surgery. There were complications with her knee surgery and consequently on or about February 20, 2016, her physician extended her leave for another six weeks. She was scheduled to return from her extended leave April 4, 2016, and the employer called the claimant April 5, 2016, because she had been gone 12 weeks at that point and was going to be required to pay for her health insurance if she did not return at that time. The employer employs less than 50 people and is not subject to the Family and Medical Leave Act. Additionally, the claimant had worked for the employer less than one year and would not have been eligible for FMLA even if the employer was a covered employer. When the employer spoke to the claimant April 5, 2016, the claimant stated that due to her knee surgery complications she had another surgery on her right wrist and elbow and a second surgery was scheduled April 15, 2016, on her left wrist. The employer told the claimant during the April 5, 2016, phone call that it needed to know when the claimant was returning and because she had been gone more than 12 weeks she would have to start paying for her health insurance. The employer also asked the claimant if her doctor could fax in more information about the extra

time off because she had not informed it of her other issues and surgeries. The claimant asked her physician to fax the documentation to the employer and it sent her short-term disability paperwork regarding her third surgery to the employer but that was not the documentation the employer needed. The claimant also asked her doctor when she could be released and was told that was unknown until after she had her next scheduled surgery. The employer told the claimant she would need to speak to the executive director because she exceeded the original six week off request without providing additional medical documentation for the last six weeks she was absent and the employer did not know about the additional surgical procedures until it happened to call the claimant April 5, 2016. On April 17, 2016, the employer sent the claimant a certified letter stating it needed more information from her doctor regarding her initial knee surgery and the two wrist surgeries. The certified letter indicated the claimant needed to provide the required information by April 25, 2016, or she would be considered to have resigned and her position terminated. On April 19, 2016, the claimant hand delivered the same short-term disability information the hospital had already sent the employer regarding the claimant's upcoming surgery on her second wrist. The claimant was unaware that the information she received from the hospital and provided to the employer was insufficient. The employer's legal department directed the employer to send the claimant a termination letter April 27, 2016, with an effective date of April 28, 2016, because the claimant had not delivered the required information.

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 § 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.

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).

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

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.

While the claimant did exceed the original six-week request for time off for her knee replacement surgery due to complications from that surgery that resulted in two additional surgeries to her wrists, she did attempt to comply with the employer's instructions. She called the hospital immediately after the April 5, 2016, phone call from the employer asking for further documentation and requested it be sent to the employer and she hand-delivered the requested information to the employer two days after receiving the certified letter telling her she had to provide the information by April 25, 2016, or her employment would be terminated.

The claimant did not know that the information she was providing was insufficient and not what the employer wanted. Given the claimant's prompt responses each time the employer asked for further medical documentation, it is likely the claimant would have provided the information the employer wanted, rather than information that only related to her last wrist surgery, had she been aware what the hospital sent over or what she delivered was not the information the employer needed. "Ordinary negligence in isolated instances, or good faith errors in judgment...are not to be deemed misconduct within the meaning of the statute. See 871 IAC r. 24.32(1)(a). Under these circumstances, the administrative law judge concludes the claimant's conduct does not rise to the level of intentional or willful job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 18, 2016, 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/pjs