

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRISTY R FULLER
Claimant

APPEAL NO. 15A-UI-01404-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABBE CENTER FOR COMMUNITY
Employer

OC: 06/08/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Abbe Center for Community (employer) appealed a representative's January 29, 2015 (reference 06) decision that concluded Cristy Fuller (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2015. The claimant participated personally. The employer participated by Kathy Koehn, Associate Executive of Outpatient Services, and Michele Ray, Vice President of Human Resources. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 4, 2014 as a full-time certified medical assistant. The claimant signed for receipt of the employer's handbook on August 5, 2014. The handbook indicates an employee will be terminated if she has more than six occurrences within a twelve-month period. On September 17, 2014 the claimant was absent due to a back issue and provided a doctor's note to the employer. The claimant was absent when her daughter, who is under two-years-old, was ill on September 5, 2014 and had tubes placed in her ears in October 2014. The claimant was absent two and one-half days and provided doctor's notes to the employer. On October 22, 2014 the employer issued the claimant a written warning for absenteeism. All the claimant's absences were properly reported.

On November 14 and 17, 2014 the claimant had pneumonia. She was absent almost three days and provided the employer with notes from her doctor. On January 5, 2015 the claimant's children suffered from Influenza A. On January 6, 2015 the claimant came down with Influenza A and was instructed by her physician not to return to work until January 10, 2015. On January 12, 2015 the employer issued the claimant a written warning for absenteeism. The employer notified the claimant that if she were absent one more time in 90 days, she would be terminated from employment. On January 14, 2015 the claimant's daughter ingested iron

pills and the claimant took her to the emergency room. The claimant was absent on January 14, 2015 because her daughter was admitted to the hospital. The employer terminated the claimant on January 15, 2015 when she returned to work.

The claimant filed for unemployment insurance benefits with an effective date of June 8, 2014. The employer participated personally at the fact-finding interview on January 28, 2015 by Kathy Koehn.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was absent for four

medical events related to her daughter and two medical events related to herself, apart from the week long Influenza A they all shared. The claimant had a number of medical issues during her short time with the employer but those issues were properly reported and do not constitute misconduct. The final incident for which the claimant was terminated was when the claimant was absent to be with her child in the hospital. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's January 29, 2015 (reference 06) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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