

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA J HAMMOND**  
Claimant

**APPEAL NO: 18A-UI-10999-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PHYSICIANS' CLINIC OF IOWA PC**  
Employer

**OC: 10/07/18**  
**Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 31, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation with this employer. The parties were properly notified about the hearing. A telephone hearing was held on November 28, 2018. The claimant participated personally. The employer participated through Amanda Frank, human resources manager. Denise Kaestner and Melanie Machula also participated.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Note to claimant: Additional information about food, housing, and other resources, can be found by dialing 211 or at [www.211iowa.org](http://www.211iowa.org).

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an RN triage nurse and was separated from employment on October 11, 2018, when she was discharged for excessive absenteeism (Employer Exhibit 1).

When the claimant was hired, she was provided a copy of employer rules and procedures including the employer's attendance policy. Because the claimant was not employed for a year, she did not qualify for FMLA or an extended leave of absence. Upon exhausting PTO, employees are subject to discipline and discharge.

The employer considered the following absences when deciding to discharge the claimant: On March 2, 2018, the claimant reported off work to be with her nephew, who was having mental

health issues. On May 10, 2018, the claimant was absent due to her son having a fever. She was absent half days on August 23 and 27, 2018 due to her son's illness. On September 11, 2018, the claimant left her shift early to go to the emergency room due to chest pains. This was the only absence she did not properly report. She was absent the next day as well. On September 26 and 27, she was absent due to her son being suicidal. She was issued a warning on September 28, 2018, that if she had two more unexcused absences, she may be discharged. On October 1, 2018, she called off work due to her son's illness (Claimant Exhibit A). On October 10, 2018, the claimant worked only a half day due to her son's continued illness. The claimant was able to have her son's father cover the other half day to care for him so she could go to work.

The majority of the claimant's absences were related to her son, who was eleven at the time and had been diagnosed with a condition that included brain inflammation (Claimant Exhibit A). With the inflammation also came increased violent and suicidal tendencies, thereby rendering the claimant unable to leave her son with just anyone for the purposes of childcare. The claimant had previously used her parents to help watch him when needed, but her mother was terminally ill and unable to assist. Her son's father sometimes helped but was unreliable. The employer attempted to help with the claimant with transportation and donations, recognizing the strain of resources she faced as a single mother.

Since separation, the claimant has stayed home full-time to care for and home-school her son. Due to his medical condition, he had only attended two school days during the fall 2018 school year.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

Excessive absences are not considered misconduct unless unexcused. The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be unexcused. *Cosper v. IDJS*, 321 N.W.2d 6, 10 (Iowa 1982). Second, the unexcused absences must be excessive. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989).

Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). In this case, all but three of the claimant's absences were related to her minor son's illness and properly reported. Two of the remaining three absences were due to the claimant's own illness and one of those was not properly reported when she went to the emergency room with chest pain. The claimant's absence attributed to her nephew would also be considered unexcused based upon the reason for the absence. Therefore, the administrative law judge concludes the claimant had two unexcused absences.

The final absence in this case was due to the claimant's minor son being ill and her complications of trying to coordinate care for him under the circumstances. The claimant knew her job was in jeopardy and went to work a half day on October 10, 2018, after securing safe care for her child. The claimant properly reported this absence to the employer. Accordingly, the administrative law judge concludes the final absence was excused because it was for illness or other reasonable grounds and properly reported to the employer. Iowa Admin. Code r. 871-24.32(7)

Based on the evidence presented, the administrative law judge concludes the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Benefits are allowed, provided she meets all other requirements.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading to separation was misconduct under Iowa law.

**REMAND:** The issue of whether the claimant is able to work, available for work and earnestly seeking work (due to family needs at home) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The October 31, 2018, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. **REMAND:** The issue of whether the claimant is able to work, available for work and earnestly seeking work (due to family needs at home) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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