

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LATISHA M WATSON
Claimant

APPEAL NO: 18A-UI-04335-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 03/04/18
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 30, 2018, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 2, 2018. The claimant participated in the hearing. Marisa Edgar-Schwebach, Administrator; Amanda Rivera, Unemployment Consultant; and Alyce Smolsky, Employer Representative; 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 CNA for Care Initiatives from January 25, 2018 to March 5, 2018. She was discharged for absenteeism.

Under the employer's attendance policy, an employee who is absent once during her first 90 days of employment receives a final written warning and the second absence during her first 90 days results in termination. The claimant was absent one or two days prior to March 1, 2018, but the employer considered those absences excused due to illness and did not warn or discharge the claimant.

On March 1, 2018, the claimant was scheduled to work from 6:00 a.m. to 2:00 p.m. She had a tooth pulled the day before and was experiencing pain and called the employer to report she would not be at work that day. She was not scheduled March 2, 2018. On March 3, 2018, the claimant reported for her 2:00 p.m. shift but left at 3:50 p.m. because she was not feeling well. She was scheduled March 4, 2018, but called the employer and stated she would not be in as she was still experiencing tooth pain.

The employer prepared a final written warning for the claimant due to her March 1, 2018, absence but the next time the administrator saw her was Saturday, March 3, 2018. The

employer's policy requires that a member of management issue the warning and another member of management witness it but on March 3, 2018, the administrator was the only member of management present and therefore she did not issue the claimant the final written warning.

On March 5, 2018, the employer called the phone number the claimant provided but did not receive an answer. It left a voice mail message notifying the claimant her employment was terminated.

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(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.

The claimant was absent March 1, March 3 and March 4, 2018. Those absences were due to issues with a pulled tooth and her wisdom teeth and another illness. While the claimant has not provided any evidence that she had a doctor's note excusing her from work for those three days, a doctor's note is not required for an absence to be considered excused for the purposes of unemployment insurance benefits.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The March 30, 2018, reference 03, decision is affirmed. 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/scn