

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KHORTNI SEEVERS
Claimant

APPEAL NO: 17A-UI-07612-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIER INC
Employer

OC: 07/02/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 25, 2017, 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 August 17, 2017. The claimant participated in the hearing. Steven Kier, Owner and Ryan Demey, Brooder Farm 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 brooding assistant for Kier Inc. from September 5, 2016 to July 3, 2017. She was discharged for attendance issues.

The employer's policy allows employees to take three sick leave days per year. The claimant signed indicating she received a copy of the employee handbook which contains the attendance policy.

On October 24, 2016, the claimant left at noon due to illness; on October 25, 2016, she was ill; on November 9, 2016, she left at noon to take her daughter to the doctor; on November 10, 2016, she left at 10:00 a.m.; on November 25, 2016, she left to take her boyfriend to the doctor and did not return to work; on December 5 and 6, 2016, she had transportation problems and called the employer to report she would be absent; on December 19, 2016, she was ill; on January 11, 2017, she stated her daughter was ill; on February 15, 2017, she was ill; on March 13, 2017, she was ill; on March 23, 2017, she left at 11:30 a.m. citing illness; on March 24, 2017, she was ill; on March 29, 2017, she left at noon to take her daughter to the doctor and did not return to work; and on March 30, 2017, she was a no-call no-show. On April 1, 2017, the employer issued the claimant a written warning and changed her status from a salaried employee to an hourly employee because she was rarely working 40 hours per week.

On May 1, 2017, the claimant left at noon; on May 2, 2017, her daughter was ill; on May 17, 2017, she was two hours late; on May 24 and May 28, 2017, she was ill; and on May 30, 2017, she left early to pick up her daughter. On July 3, 2017, the employer notified the claimant it was giving her a two-week notice of termination effective July 17, 2017. On July 7, 2017, the claimant texted the employer and said she would not be back.

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.

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).

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.

Although the claimant had a poor attendance record while working for the employer, her final absence May 30, 2017, cannot be considered a current act of misconduct because the employer allowed more than one month to elapse before terminating the claimant's employment. Therefore, benefits must be allowed.

DECISION:

The July 25, 2017, 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/rvs