

her daughter was ill. The claimant's daughter is around seven years old and not able to be left on her own. There is no evidence that the claimant had anyone other than herself to care for the sick child. The employer requested that the claimant come in to discuss her absence of August 1 but at hearing admitted that, even had the claimant shown up for the meeting on August 2 or 3, she would have been discharged.

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:

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.

871 IAC 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). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991). The claimant could not legally or morally leave a seven year old child alone to care for herself while she went to work. With no daycare available for her ill child the administrative law judge cannot find the claimant's absence from work volitional. Because the final absence was related to the properly reported illness of a small child, for which no childcare was available, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. An employer's no fault attendance policy is not dispositive of the issue of entitlement to unemployment insurance benefits. The employer's requirement that employees find their own replacement is not feasible under every circumstance and the claimant's failure to find a replacement does not render her absence unexcused. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 24, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc