

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M GARCIA
Claimant

APPEAL NO. 13A-UI-07142-ST

GRANDVIEW HEIGHTS INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated June 7, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism and tardiness on May 22, 2013, and benefits are denied. A hearing was held on July 22, 2013. The claimant participated. The employer did not participate.

The department re-scheduled the hearing by Order because it failed to record the employer request to participate. A hearing was held on August 20, 2013. The claimant participated. Daniel Larmore, Administrator, and Joey Oxenfeld, Director of Nursing Services, participated for the employer.

ISSUE:

The issue is whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: Claimant was hired on May 15, 2013 and last worked as a full-time C.N.A. on May 22, 2013. The employer attendance policy is an employee who accumulates 18 points for violations within a one-year period is subject to termination.

The employer issues a first and second written warning to claimant about excessive absences to let her know that 18 points could lead to termination. The employer issued claimant a third written warning on May 8, 2013 that carried a three-day suspension claimant served on May 13, 15 & 15. Claimant was at 15 points at the suspension warning date but she failed to timely call and report an absence on Sunday May 12.

Fifteen absence points was due to claimant calling in absences due to personal illness and she had doctor excuses. The excuses do not remove a three-point absence for this occurrence and claimant had 15 points for this reason.

Claimant returned to work from her suspension on May 17, and had no further attendance issue leading to her discharge on May 22. The day before the employer gave claimant the option to resign, but she declined on May 22. She was discharged for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes employer has failed to establish claimant was discharged for misconduct on May 22, 2013 due to excessive "unexcused" absenteeism.

Absences due to properly reported illness especially ones where an individual has doctor excuse do not constitute misconduct. The employer does not deny that these absences constitute 15 of the 18 points relied upon for discharge. While claimant was a no-call/no-show on May 12 that is an unexcused absence, she served a disciplinary suspension after that date and there is no current act of misconduct after her work return on May 17 leading to May 22 discharge. For these reasons, employer has failed to establish job disqualifying misconduct.

DECISION:

The department decision dated June 7, 2013, reference 01, is reversed. Claimant was not discharged for misconduct on May 22, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs