

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA WICKETT**  
Claimant

**APPEAL NO: 06A-UI-09189-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN HOME FOR THE AGING  
MADRID HOME**  
Employer

**OC: 08-06-06 R: 12**  
**Claimant: Respondent (1)**

871 IAC 23.43(9)a – Combined Wage Claim – Relief of Benefit Charges  
Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 13, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 27, 2006. Claimant participated. Employer participated through Mary Bustad and Roberta Runneberg.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time temporary activity aide from January 12, 2006 until March 7, 2006 when she was discharged. She was hired to work through April 30, 2006. She was last absent on March 6 because her regular sitter's child was ill and she was not providing care that day. The backup childcare provider was the child's paternal grandfather who was also ill and was not able to provide care. Claimant used the daycare in the employer's building (Tiger Tots) through sometime in February. That provider does not accept ill children. Employer warned her in writing on March 1, 2006 about absenteeism. She was also absent on February 2 because of a sick child (her four-year-old had ongoing chronic health issues related to open heart surgery as an infant). She also missed work from February 20 through 22, 2006 because of a sick child. Her other children are ages 5 and 8. The grandfather was also ill so was unable to care for the child.

Claimant denies she was tardy on January 26, 2006 but admits leaving early on January 30, 2006 due to her personal illness (vomiting). On February 1, she left early but cannot recall the reason. Employer's policy requires employees to call in two hours before the shift which, for claimant, started at 9 a.m. She did follow those instructions after the March 1, 2006 warning.

## 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 § 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 or injury 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which she was discharged was related to a properly reported illness of a chronically ill young child, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code § 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account

for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

Since employer would not be relieved of charges based upon an Iowa claim given this fact scenario, it will not be relieved of charges on this combined wage claim. Claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

**DECISION:**

The September 13, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Claimant's qualification and eligibility shall be determined by the state in which the claim was filed. Employer shall not be relieved of benefit charges.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/cs