

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MEAGAN J FORT
Claimant

APPEAL NO: 19A-UI-03085-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCE PARTNERS LLC
Employer

OC: 03/10/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 3, 2019, reference 02, 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, 2019. The claimant participated in the hearing. Renae Merchant, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 security officer for SCE Partners (Hard Rock Hotel and Casino) from August 29, 2018 to November 6, 2018. She was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault attendance policy and employees are terminated upon reaching 12 points (Employer's Exhibit One). If an employee notifies the employer of her absence less than two hours in advance she receives two points; if she notifies the employer of her absence more than two hours in advance she receives one point; if she notifies the employer during her shift she receives four points; if she is a no-call/no-show she receives six points; if she is going to be absent more than three consecutive workdays and has a doctor's note the employer will grant a leave of absence; if she is more than 30 minutes tardy she receives one point; if she is less than 30 minutes tardy she receives one-half point; if she leaves within the first two hours of her shift she receives one point; and if she leaves more than two hours after the start of her shift she receives one-half point (Employer's Exhibit One).

Employees receive a documented verbal warning upon accumulating five attendance points; a written warning upon accumulating seven attendance points; a final written warning upon accumulating 10 attendance points, and is discharged upon accumulating 12 attendance points (Employer's Exhibit One).

On September 12, 2018, the claimant was more than 30 minutes tardy and received one point; on September 14, 2018, she was absent and called less than two hours prior to her shift and received two points; the employer granted her a leave of absence to cover her absence from September 27 through October 5, 2018, and she did not receive any points for that absence; on October 10, 2018, she was more than 30 minutes tardy and received one point; on October 12, 2018, she was absent and called in more than two hours before her shift and received one point; on October 15, 2018, she was absent and called in more than two hours before her shift and received one point; on October 22, 2018, she was absent and called in more than two hours prior to her shift and received one point; on October 30, 2018, she was less than 30 minutes tardy and received one-half point; on November 3, 2018, she called in less than two hours before the start of her shift and received two points; on November 5, 2018, she was more than 30 minutes tardy and received one point; and on November 6, 2018, she left more than two hours after the start of her shift and received one-half point (Employer's Exhibit One).

The claimant received a documented verbal warning October 15, 2018, at five attendance points and a written warning October 24, 2018, at seven attendance points. The employer prepared a final written warning for the claimant November 6, 2018, but she left for a medical appointment before it could give it to her (Employer's Exhibit One).

The claimant was suffering from problems with her psychiatric medications and took the leave of absence from September 27 through October 5, 2018, while her doctor tried to get her medication right. She returned to work without it being completely corrected because she could not afford to miss additional work without pay. She had doctor's appointments November 5 and November 6, 2018, which caused her to be absent and tardy those two days. She called her supervisor November 6, 2018, and told him she would not be returning after her psychiatric appointment and he notified her that 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.

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

DECISION:

The April 3, 2019, reference 02, 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