

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AMANDA NIMRICK
Claimant

APPEAL NO: 20A-UI-11029-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY MEDICAL CENTER
Employer

OC: 06/28/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 4, 2020, 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 October 28, 2020. The claimant participated in the hearing. Janis Smelek, Human Resources Business Partner, 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 administrative assistant for Trinity Medical Center from December 3, 2018 to June 26, 2020. She was on FMLA from January 22 to February 18, 2020. She returned and worked March 2, March 3 and March 4, 2020, but became ill and called off work March 5 and March 6, 2020, and went back on FMLA March 9, 2020. She exhausted her FMLA April 21, 2020, and on April 21, 2020, the employer transitioned the claimant to a medical leave of absence. Under the employer's policy an employee cannot exceed six months of combined FMLA and medical leave. The claimant had a doctor's appointment scheduled May 20, 2020, and the parties were waiting to see if she would be released at that appointment but she was not. When the claimant was not released by June 26, 2020, the employer terminated the claimant's employment. The claimant received a full medical release July 7, 2020.

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 illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed effective the week ending July 11, 2020.

DECISION:

The September 4, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed effective the week ending July 11, 2020, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

October 30, 2020
Decision Dated and Mailed

je/sam