

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BERTHA V GOMEZ**  
Claimant

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**APPEAL 15A-UI-13271-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/08/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 1, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2015. The claimant participated personally. The employer participated through Barb Owca, human resources business partner. Ona Lovell also participated with the employer. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a housekeeper and was separated from employment on November 12, 2015; when she was discharged.

The employer has a policy that states an employee will be discharged upon the receipt of four "2nd level" warnings in a 12-month period. A 2nd level warning is a written warning. The employer also has an attendance policy which tracks attendance occurrences; including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as occurrences are accumulated, and will be discharged upon receiving seven occurrences in a rolling six months. The claimant was made aware of the employer's policy at the time of hire. The claimant had zero no call/no shows during her employment but had occurrences on March 7, 12, 13, and 30, May 8 and 14, June 8 and 9, August 4 and 18, September 20, October 18 and 19, and November 9 and 12. The claimant received warnings for her attendance on June 17, August 19, and November 4, 2015. The claimant's absences were related to her ongoing gall bladder stone issues, which would cause her pain, to hunch over, and required medical care and medication. The claimant made the employer aware of her condition and would provide medical notes to update the employer. However, since the employer's policy is a "no-fault" policy, the reason for her absence did not

affect occurrence points being given. The reason for the final occurrence was related to a tardy on November 12, 2015 and the reason was the claimant was ill. The claimant stated she took steps to allow enough time so she could take medication if needed and still drive to work, recognizing her job was in jeopardy and reason for absences did not matter. She was subsequently 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 § 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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper, supra*; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit, supra*.

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

The employer has not established that the claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The December 1, 2015 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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