

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY M SCHLEUSENER
Claimant

APPEAL NO: 17A-UI-12551-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUNRISE RETIREMENT COMMUNITY
Employer

OC: 11/12/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 4, 2017, reference 01, 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 December 27, 2017. The claimant was not available when called for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Kandie Terry, Human Resources Director, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were 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 housekeeper for Sunrise Retirement Community from April 17, 2017 to November 7, 2017. She was discharged for attendance issues.

The employer's attendance policy allows three unexcused absences before termination occurs (Employer's Exhibit Five). An absence accompanied by a doctor's note is considered excused if properly reported at least two hours prior to the start of the shift (Employer's Exhibit Five). Leaving a message is unacceptable; the employee who is absent must speak to someone personally (Employer's Exhibit Five).

The claimant was absent due to illness May 22, 2017, but did not provide a doctor's note and the absence was considered unexcused; she left early due to an ill child May 31, 2017, but did not provide a doctor's note and the absence was considered unexcused; she was absent due to illness June 1 and June 2, 2017, but did not provide a doctor's note and the absence was considered unexcused; she was absent due to illness July 3, 2017, but provided a doctor's note and the absence was considered excused; she left early due to illness July 12, 2017, but did not provide a doctor's note and the absence was considered unexcused; she was absent due to illness October 13, 2017, but did not provide a doctor's note and the absence was considered

unexcused; she was absent due to illness October 23, 2017, but did not provide a doctor's note and the absence was considered unexcused; and she left after approximately one hour due to illness October 27, 2017, but did not provide a doctor's note and the absence was considered unexcused (Employer's Exhibit One). On November 6, 2017, her father texted her stating her child was ill after the claimant was at work for 30 minutes. She called her supervisor but she did not answer because she was in a meeting. She left a message and then notified a co-worker in housekeeping that she needed to leave. Her supervisor called her about 20 minutes later and stated she needed permission to leave. The claimant reported for work November 7, 2017, with a doctor's note but the employer terminated her employment for failing to follow the chain of command in reporting she was leaving November 6, 2017.

On June 15, 2017, the claimant received a written warning and a 60 day probation period was imposed after the claimant accumulated four absences; on July 12, 2017, she received a written warning, 90 day probation and three day suspension after accumulating two more unexcused absences; and on November 7, 2017, her employment was terminated for unexcused absenteeism (Employer's Exhibits Two through Four).

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.

While the claimant did accumulate seven unexcused absences according to the employer's policy, all of her absences were due to the illness of herself or her child and all but the last absence was considered properly reported per the employer's policy. After the claimant

received the message from her father that her child was ill November 6, 2017, she tried to call her supervisor but she was unavailable. Consequently, she improperly notified another housekeeping employee rather than reporting her absence to human resources as required. She also provided a doctor's note for that absence.

Although the final absence was not properly reported, it was an isolated incident of misconduct on the part of the claimant. Because the final absence was related to illness, relayed to a co-worker and accompanied by a doctor's note, the administrative law judge must conclude one incident of improperly reported absence does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The December 4, 2017, reference 01, 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