

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MEGAN D WATERHOUSE
Claimant

MERCY HOSPITAL
Employer

APPEAL 14A-UI-10992-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/21/14
Claimant: Respondent (1R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the October 13, 2014, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2014. Claimant participated. Employer participated through Angie Hoover, Employee Relations Manager and through Tracy Stolpe, Employee Safety Coordinator.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a staff nurse and beginning on May 19, 2014 through September 13, 2014 when she was discharged. On August 13 the claimant sustained what both parties agree was a work-related injury. The employer needed to fill the claimant's position as soon as possible. Since the claimant was such a new employee she did not have leave under the Family Medical Leave Act (FMLA) available to her. As of September 13 the claimant was not released to return to work without restrictions by her treating physician. The employer ended the claimant's employment because she was not able to return to work without restrictions by September 13, 2014. The claimant had light-duty restrictions as of September 13, 2014 and on the day of the hearing. No initial determination has been made on whether the claimant is able to and available for work.

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. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. 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. The claimant was discharged due to her inability to return to work due to a work-related injury. Failure to be able to return to work due to a work-related injury is not job connected misconduct. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 13, 2014 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue as to whether the claimant is able and available for work is remanded to the unemployment claims service center for an initial review and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css