289 S.E.2d 357 (1982)

INTERCRAFT INDUSTRIES CORPORATION,

v.

Karen M. MORRISON and Employment Security Commission of North Carolina.

No. 154A81.

Supreme Court of North Carolina.

March 30, 1982.

358 *358 Pope, McMillian, Gourley & Kutteh by William H. McMillian, Statesville, for plaintiff.

Employment Sec. Commission of North Carolina by T. S. Whitaker, Acting Chief Counsel, V. Henry Gransee, Jr., Staff Atty., and Thelma M. Hill, Staff Atty., Raleigh, for defendants-appellants.

BRANCH, Chief Justice.

The question presented by this appeal is whether claimant's unexcused absence from work on 16 February 1980, which violated her employer's rule and which was due to her inability to secure child care, constituted "misconduct" connected with her work so as to disqualify her for unemployment compensation benefits.

G.S. 96-14(2), in part, provides:

> An individual shall be disqualified for benefits ... if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work.

359 This Court has not defined "misconduct" in the context of the statute. However, *359 the rule recognized by our Court of Appeals and the majority of the courts of other jurisdictions is that misconduct sufficient to disqualify a discharged employee from receiving unemployment compensation is conduct which shows a wanton or wilful disregard for the employer's interest, a deliberate violation of the employer's rules, or a wrongful intent. *See* *In re Collingsworth,* 17 N.C.App. 340, 194 S.E.2d 210 (1973), and cases there cited, 76 Am.Jur.2d, *Unemployment Compensation* § 52 (1975); *Beaunit Mills, Inc. v. Division of Employment Security,* 43 N.J.Super. 172, 128 A.2d 20 (1956); *Checker Cab Co. v. Industrial Comm.,* 242 Wis. 429, 8 N.W.2d 286 (1943). *See also* Annot., Unemployment Compensation — Misconduct, 26 A.L.R.3d 1356, § 3 at 1359 (1969). We adopt this majority rule.

The obvious reasons for such a rule are to prevent benefits of the statute from going to persons who cause their unemployment by such callous, wanton, and deliberate misbehavior as would reasonably justify their discharge by an employer, and to prevent the dissipation of employment funds by persons engaged in such disqualifying acts.

Our research discloses that it is generally recognized that chronic or persistent absenteeism, in the face of warnings, and without good cause may constitute wilful misconduct. *See* Annot., Unemployment Compensation—Absenteeism, 58 A.L.R.3d 674, § 3 at p. 685 (1974); Annot., Unemployment Compensation—Absences, 41 A.L. R.2d 1158, § 3 at p. 1160 (1955). However, a violation of a work rule is not wilful misconduct if the evidence shows that the employee's actions were reasonable and were taken with good cause. *In re Collingsworth, supra; Kindrew v. Unemployment Comp. Bd.,* 37 Pa.Commw.Ct. 9,

388 A.2d 801 (1978); *Unemployment Comp. Bd. v. Iacano,* 30 Pa.Commw.Ct. 51, 357 A.2d 239 (1976); *Boynton Cab Co. v. Neubeck,* 237 Wis. 249, 296 N.W. 636 (1941). This Court has defined a "good cause" to be a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. *In re Watson,* 273 N.C. 629, 161 S.E.2d 1 (1968); *see also, In re Clark,* 47 N.C.App. 163, 266 S.E.2d 854 (1980).

Ordinarily a claimant is presumed to be entitled to benefits under the Unemployment Compensation Act, but this is a rebuttable presumption with the burden on the employer to show circumstances which disqualify the claimant. *Kelleher Unemployment Comp. Case,* 175 Pa.Super. 261, 104 A.2d 171 (1954). *See also* Annot., Unemployment Compensation—Absenteeism, 58 A.L.R.3d 674 (1974). We note in passing that the employer did not except to or attack the statement of the Commission in its decision that the employer had the responsibility to show that a claimant for benefits was discharged for misconduct within the meaning of the law.

G.S. 150A-1 exempts the Employment Security Commission from the provisions of Chapter 150A, the Administrative Procedure Act. However, our case law recognizes that an appeal from an administrative decision constitutes an exception to the judgment and presents the question whether the facts found are sufficient to support the judgment, *i.e.,* whether the court correctly applied the law to the facts found. *In re Burris,* 261 N.C. 450, 135 S.E.2d 27 (1964). In considering an appeal from a decision of the Employment Security Commission, the reviewing court must (1) determine whether there was evidence before the Commission to support its findings of fact and (2) decide whether the facts found sustain the Commission's conclusions of law and its resulting decision. *Employment Security Comm. v. Jarrell,* 231 N.C. 381, 57 S.E.2d 403 (1950).

On the question of "good cause" for claimant's unexcused absence on 16 February 1980, the record discloses a showing by claimant that she "just couldn't find child care" on that date. This evidence was sufficient to permit, but not require, the Commission to find that claimant's unexcused absence was for good cause. *Kelleher Unemployment Comp. Case,* 175 Pa.Super. at 264, 104 A.2d at 173.

360 *360 We wish to make it clear that it is our opinion that, depending on circumstances disclosed by the evidence, the lack of child care may or may not be "good cause" for an unexcused absence from work. This is a matter for the factfinder, here the Commission, to decide.

In instant case, the claimant offered uncontroverted evidence tending to show good cause. Employer, who had the burden of showing claimant to be disqualified to receive benefits under the Act, offered nothing to refute claimant's showing. Thus, there was competent evidence to support the Commission's findings favorable to claimant, and these findings are conclusive on appeal. *In re Thomas,* 281 N.C. 598, 189 S.E.2d 245 (1972). We are of the opinion that the findings, though sparse, support the Commission's conclusions of law and the conclusions of law sustained the Commission's decision. We note parenthetically that had employer offered any evidence to negate claimant's evidence of "good cause" the Commission should have made a specific finding as to whether "good cause" existed.

For the reasons stated, the decision of the Court of Appeals is

AFFIRMED.

CARLTON, Justice, dissenting.

I respectfully dissent from the majority opinion for the same reasons given by Judge Hedrick in his dissent in the Court of Appeals' opinion. 54 N.C.App. 225, 282 S.E.2d 555 (1981).

COPELAND and MEYER, JJ., join in this dissenting opinion.