

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD D DAVIS**

Claimant

**APPEAL NO. 09A-UI-07328-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**

Employer

**OC: 04/20/08**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Qwest Corporation filed an appeal from a representative's decision dated May 5, 2009, reference 06, which held that no disqualification would be imposed regarding Richard Davis' separation from employment. After due notice was issued, a hearing was held by telephone on June 8, 2009. Mr. Davis participated personally. The employer participated by Laura Griffith, Site Training Manager, and was represented by Kelley Lendolfi of Barnett Associates.

**ISSUE:**

At issue in this matter is whether Mr. Davis was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Davis was employed by Qwest from February 9 until April 13, 2009 as a full-time customer sales and service associate. He was discharged due to unsatisfactory attendance during the probationary period. Associates are subject to discharge if any time is missed during the first three months of employment.

Mr. Davis was on his way to work on March 10 when he received a call from his son's school. His son had suffered a "meltdown" and had to be taken for medical treatment. As a result of the absence, he received a written warning. On or about March 24, he received a call at work from his wife complaining of a migraine headache. He met her at the hospital and it was determined that she had suffered a stroke in one eye. Mr. Davis was then given a warning of dismissal. The final absence that prompted the discharge occurred on April 10. Mr. Davis received a call from the nurse at his son's school indicating he had been involved in a fight. He took his son for medical treatment and then had to remain with him for the remainder of the day.

Due to his three absences, Mr. Davis was discharged on April 13, 2009. Attendance was the sole reason for the separation.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

All three of the absences that caused Mr. Davis' discharge are excused. They were all for reasonable cause, the illness or injury of immediate family members, and were all properly reported to the employer. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. It was the employer's prerogative to discharge Mr. Davis due to his unacceptable attendance. However, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated May 5, 2009, reference 06, is hereby affirmed. Mr. Davis was discharged by Qwest but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css