

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE L LUJAN**  
Claimant

**APPEAL NO: 11A-UI-11584-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 07/31/11**  
**Claimant: Respondent (5)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 25, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing with his union representative, Brian Ulin. Ben Wise, a hiring supervisor, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in December 2001. The employer's attendance policy informs employees they can be discharged if they accumulate 14 attendance points in a rolling calendar year. The employer's policy is a no-fault policy.

The claimant received a verbal warning in May 2011 when he had seven attendance points. As of July 25, the claimant had nine attendance points. The claimant received a message that his sister was ill and he left on July 26 to take care of her. The claimant's mother passed away when he was very young and his sister took care of him when he was growing up. The claimant made a request for Family Medical Leave when he left on July 26 to take care of his sister.

The employer denied the claimant's request for family medical leave because leaving to take care of a sibling is not a qualifying member of the family. The claimant did not know his FMLA request had been denied. When the claimant notified the employer on July 26, he called after his shift started. Instead of assessing the claimant one point for each day he missed, the employer assessed him two points for failing to timely notify the employer he was absent.

When the claimant returned to work on August 3, he had accumulated a total of 19 attendance points or ten for the five days he had been absent. On August 4, the employer discharged the claimant for violating the employer's attendance policy.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Based on the employer's attendance policy, the employer established justifiable business reasons for discharging the claimant. When the claimant left to take care of his sister, his job was not in jeopardy and he only had nine attendance points. When the claimant left, the claimant did not know his FMLA request would be denied. If the employer had granted the claimant his FMLA request, the claimant was only required to call the employer on Monday or the beginning of the week, not every day. Since the claimant has worked since 2001, the employer's witness did not know why the employer did not grant the claimant a personal leave of absence for the days he was absent. It was not until the claimant returned to work that the claimant learned his job was in jeopardy because of attendance issues. This was because the employer denied his FMLA request.

Based on the facts in this case, the claimant established reasonable grounds for being absent July 27 through August 2. Before he left to take care of his sister, he took reasonable steps to maintain his employment. He had no idea when he left the employer would deny his FMLA request. The claimant did not commit work-connected misconduct. As of July 31, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 25, 2011 determination (reference 01) is modified, but the modification has no legal consequence. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 31, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css