

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH JONES**

Claimant

**APPEAL NO: 10A-UI-06334-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PEARSON GOVERNMENT SOLUTIONS INC**

Employer

**OC: 03-21-10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 12, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 16, 2010. The claimant participated in the hearing. Marjorie Kinsel, Human Resources Generalist, participated in the hearing on behalf of the employer.

**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 part-time customer service representative for Pearson Government Solutions from September 28, 2008 to March 12, 2010. He worked Mondays, Wednesdays, and Fridays. The employer uses a no-fault, point-based attendance policy. Three points are issued for a full day absence; one and one-half points are issued for a partial absence if an employee is absent more than one hour but less than one-half of his scheduled shift; and one point for an incident of tardiness of one hour or less. Additionally, the employer has certain "priority days" when it knows to expect a high volume of calls and an employee receives five points if he is absent on one of those days. Employees receive a verbal warning upon reaching 12 points and then their point total reverts to zero and they receive a written warning upon reaching nine more points. The employee is allowed one verbal warning every six months and one written warning every 12 months. The claimant received a verbal warning December 15, 2008; a written warning April 10, 2009; and another verbal warning November 23, 2009. He had a partial absence February 8, 2010, and received one and one-half points; was absent due to illness February 17 and 19, 2010, and received three points for consecutive days of absence; was absent on a priority day March 3, 2010, for personal reasons and received five points; and was absent March 10, 2010, due to illness with a doctor's excuse and received three points for a total of 10.5 points. Because it had not been six months since his last verbal warning or twelve months since his last written warning the employer did not have any other disciplinary steps left except termination. Consequently, the employer notified the claimant his employment was terminated March 12, 2010.

**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:

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.

871 IAC 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). While the claimant did exceed the allowed number of attendance points as set by the employer, his last absence was due to a properly reported illness. Absences due to properly reported absences because of illness are not considered misconduct and benefits are allowed under the law regardless of the employer's policy and the reasons for the claimant's previous absences. Because the final absence in this case was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The April 12, 2010, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs