

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON I BIRD**  
Claimant

**APPEAL NO. 09A-UI-06980-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VANTEC INC**  
Employer

**OC: 04/05/09**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Vantec, Inc. filed an appeal from a representative's decision dated May 4, 2009, reference 01, which held that no disqualification would be imposed regarding Shannon Bird's separation from employment. After due notice was issued, a hearing was held by telephone on June 2, 2009. Mr. Bird participated personally. The employer participated by Brittany Sickels, Human Resources Manager. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Bird 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. Bird was employed by Vantec, Inc. from September 2 until December 1, 2008 as a full-time machine operator. His last day of work was October 31. He was off work thereafter because he sustained a burn to his hand away from work.

Mr. Bird saw his doctor and was released to work on November 28. He called the employer on the afternoon of November 28 to report that he had been released. His crew was scheduled to work that weekend, November 29 and 30, but he was told to return with his doctor's excuse on Monday, December 1. When he went in on December 1, he was asked to sign a statement indicating he no longer had a job because he ran out of attendance points on November 30. He declined to sign the statement. Mr. Bird was not allowed to return to work. All of his prior absences were due to illness.

**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 of Mr. Bird's absences prior to November 29 are excused as they were due to illness and were properly reported. The parties dispute whether there was any notice that he would be absent November 29 and 30. His explanation was both reasonable and credible. He called on November 28, a Friday, after having been gone for an extended period of time. It was not unreasonable that he would be told to come back the following Monday with his doctor's excuse rather than working the upcoming weekend. For the above reasons, the administrative law judge concludes that Mr. Bird was excused in advance from work on November 29 and 30. Therefore, there was no need for him to call on either date.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish any unexcused absences on Mr. Bird's record. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Inasmuch as attendance was the only reason for the discharge, it must be concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated May 4, 2009, reference 01, is hereby affirmed. Mr. Bird was discharged by Vantec, Inc. but 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