

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORREY D KILBURG**  
Claimant

**APPEAL NO. 07A-UI-00301-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA CONCRETE**  
Employer

**OC: 11/12/06 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Iowa Concrete filed an appeal from a representative's decision dated December 29, 2006, reference 02, which held that Correy Kilburg was available for work and that the employer's account would not be relieved of charges. After due notice was issued, a hearing was held by telephone on January 25, 2007. Mr. Kilburg participated personally. The employer participated by Olin Quissell, President.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kilburg began working for Iowa Concrete on October 30, 2006 as a full-time laborer. On the morning of November 13, he called to report that he would be absent due to illness. He called the appropriate number to report the absence and the call was received by the employer's answering service at 6:17 a.m. The employer did not receive the message until 7:48 a.m.

The employer called Mr. Kilburg the evening of November 13 and told him his services would not be needed on November 14. He was told he would be called when needed. The employer has decided that Mr. Kilburg will not be called back for further work. The absence of November 13 was the only time Mr. Kilburg had missed from work.

**REASONING AND CONCLUSIONS OF LAW:**

Although Mr. Kilburg was told on November 13 that he would be called for further work, the employer has established that he will not be called back. As such, the separation is now considered a discharge. 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).

Mr. Kilburg was discharged after one absence. The absence was due to illness and was properly reported. Therefore, the absence is excused and cannot form the basis of a misconduct disqualification. The evidence of record does not establish any other cause for the discharge. The administrative law judge concludes that the employer has failed to establish that Mr. Kilburg should be disqualified from receiving job insurance benefits.

**DECISION:**

The representative's decision dated December 29, 2006, reference 02, is hereby affirmed as to result. Mr. Kilburg was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs