

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAVON T COLLINS
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL NO. 14A-UI-02378-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 20, 2014, reference 01, that held he was discharged for excessive unexcused absenteeism on January 29, 2014, and benefits are denied. A telephone hearing was held on March 25, 2014. The claimant participated. Floyd Jones, Site Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired June 4, 2013 and last worked as full-time labor on January 24, 2014. The claimant received the employer attendance policy that provides for discipline up to termination for missing twenty (20) or more days of work within a calendar year. If an employee misses work due to illness and has a doctor excuse it is counted as an absence.

Claimant reported an absence due to illness on the employer voice mail system for January 21, 2014. The employer counted 25 absences and terminated claimant on January 24. It would not accept a doctor excuse he had for his recent absence. Although the employer believed claimant had been suspended at a former job site for excessive absences, it could not establish the date. Claimant denies the suspension.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The administrative law judge concludes that the employer failed to establish misconduct and any current act of misconduct in the discharge of the claimant on January 24, 2014, for excessive "unexcused" absenteeism.

Absences due to properly reported illness are excusable and not misconduct. Claimant offered credible testimony that his recent absence was due to properly reported illness and he had a doctor excuse. Although claimant was excessively absent in violation of the employer attendance policy, it did not establish the absences were for non-excusable reasons.

DECISION:

The decision of the representative dated February 20, 2014, reference 01, is reversed. The claimant was not discharged for misconduct and/or a current act of misconduct in connection with employment on January 24, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css