

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SVEN E DAHLSTROM
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**IOWA ALUMINUM INC
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**Appeal Number: 05A-UI-12124-LT
OC: 10-23-05 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Employer filed a timely appeal from the November 22, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 15, 2005. Claimant did participate. Employer did participate through Mike Lawrence and Diane Grimes.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time maintenance worker through October 26, 2005, when he was discharged. His last day worked was October 18, and when Ray Howard, laborer and claimant's source of transportation, stopped to pick him up for work on October 19, claimant's spouse told him claimant had hurt his back working overtime (later diagnosed as herniated

discs, bulging and dislocation of three discs) and asked that Howard relay the message to employer since they had no telephone. She also gave Howard the office key since he would arrive first and claimant usually unlocked the building before Tom Kurimski, supervisor; Diane Grimes, office manager; or Mike Lawrence, president, arrived. Each morning on October 19, 20 and 21 Howard reported claimant's absence to Kurimski, and on October 21 Kurimski took claimant's office key from Howard. Howard continued to stop by claimant's home before work and relayed claimant's absence to Kurimski on October 24, 25 and 26.

Claimant's doctor's office is in Hedrick, Iowa, about 50 minutes from Albia. Although he had appointments on October 24 and 25 and did not think to call employer from there or have the doctor fax an excuse, employer was aware that Kurimski communicated with Howard about claimant at least since claimant's office key was retrieved. Kurimski and Lawrence knew claimant did not have a phone and never visited him in spite of his living one and one-half miles from the office.

When claimant was on call and had to work because of an emergency during the night, Lawrence physically went to claimant's home, knocked on the door, and provided transportation to the work place. Lawrence also knew claimant rode to work with Howard, questioned Kurimski about what he knew, and was advised that Howard reported claimant was absent due to a back injury.

On October 21 claimant's spouse, Trisha Dahlstrom, went to the office between 2:00 and 2:45 p.m. and told Grimes in main office area she was present to pick up claimant's check because he was not able to do so because his back hurt. Initially, Grimes would not give Trisha the check without written permission until she explained the situation to Grimes. Grimes did not inquire further. Claimant had one prior verbal warning about attendance on March 29, 2005 and no written warning as is guaranteed by employer's policy before termination.

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 or injury cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

By their conduct, it is concluded that Lawrence and Grimes intentionally withheld information, even after being questioned on direct exam, and only admitted knowledge about having found out about the back injury by October 21 after claimant's and Trisha's testimony. This renders employer wholly incredible, as both Lawrence and Grimes each had independent knowledge of claimant's medical condition no later than October 21. Furthermore, it appears that the two witnesses colluded about their supposed individual lack of knowledge, especially given Kurimski's lack of participation and Trisha's addition as a witness during the course of the hearing. But for Trisha's participation and recollection of the conversation with Grimes and each communication with Howard, Lawrence's and Grimes' collective and individual recollection of events may not have been fully clarified, in spite of having testified under oath or affirmation under direct examination about their specific knowledge, or lack thereof, of claimant's absences.

Because the final absence for which he was discharged was related to properly reported injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

Note to parties: Any reference to the work-relatedness of claimant's injury is specific to this unemployment insurance benefits determination only and is not binding on the issue of claimant's entitlement to workers' compensation benefits, if any. That issue falls within the authority of the Iowa Workers' Compensation Commissioner.

DECISION:

The November 22, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjw