

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W GATTON

Claimant

APPEAL NO. 14A-UI-00847-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFERIGERATED SVCS INC

Employer

OC: 12/22/13

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated January 14, 2014, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on December 20, 2013 and benefits are allowed. A hearing was held on February 13, 2014. The claimant did not participate. Ryan Axman, Plant Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

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 worked as a full-time warehouse employee from February 25, 2013 to December 9. The claimant received the employer attendance policy that provides employment termination occurs at ten points.

The employer issued claimant written corrective actions for absences from July 11, 2013 through November 22. The discipline shows claimant was counted points for sickness. The employer did not record the reason for timely reported absences for October 25, November 22 and December 20. The employer did not know the reason for absence. When claimant accumulated ten attendance points with the December 20 absence, he was terminated.

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(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 in the discharge of the claimant on December 20, 2013, for excessive "unexcused" absenteeism.

The employer record does show claimant absenteeism but it does not always record the absence reason. At least two of the ten points are based on properly reported illness that means claimant did not have excessive unexcused absenteeism to reach ten points when considering whether misconduct has occurred. The employer did not offer the November written discipline as evidence to show the reason for the 22nd absence.

DECISION:

The decision of the representative dated January 14, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on December 20, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs