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

RACHEL L SHEPARD
Claimant

JACOBSON STAFFING COMPANY LC
Employer

APPEAL NO. 13A-UI-09643-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/21/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated August 12, 2013, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on June 24, 2013 and benefits are allowed. A hearing was held on September 25, 2013. The claimant participated. Ruth Caster, Office 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 on November 14, 2012 and last worked on assignment at Lee Container as a full-time machine operator on June 18, 2013. The employer issued claimant written warnings leading to a final warning on May 13, 2013 for absences, leaving work early and a late to work.

Most recently, claimant was absent on April 1 due to a personal illness, April 5 for sick children, and April 17 for an unrecorded reason. After the final warning claimant left work early on May 21. Lee Container gave claimant a performance evaluation on June 11 stating she needed to improve her attendance.

On June 17 claimant called in an absence due to personal illness and she later provided a doctor excuse. The employer terminated claimant on June 19 for attendance issues that include ten absence days, seven leaving early and one late to work.

The employer representative did not participate in department fact-finding with a personal representative but it did provide documents. There is no claimant availability for work issue.

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.

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.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on June 19, 2013, for excessive "unexcused" absenteeism and other attendance issues.

The employer must establish the most recent attendance issue is for misconduct. The employer relies on claimant's report of personal illness absence with a doctor's excuse on June 17. This absence is for an excusable reason. The employer has failed to establish job disqualifying misconduct because the most recent absence incident is not misconduct.

DECISION:

The decision of the representative dated August 12, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct in connection with employment on June 19, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Randy L. Stephenson
Administrative Law Judge

_____
Decision Dated and Mailed

rls/pjs