

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK LOEBACH**  
Claimant

**APPEAL NO: 11A-UI-08874-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**  
Employer

**OC: 05-22-11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 27, 2011, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 28, 2011. The claimant participated in the hearing. Kristen Moore, Account Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time operator I for Jacobson Staffing last assigned to Hach Chemical from March 1, 2010 to April 19, 2011. He was discharged for exceeding the client's allowed number of attendance points. The client has a no-fault attendance policy and employees are discharged upon reaching 14 points. The points drop off after three months. The employer testified the claimant called in and reported he would be absent due to either his or his wife's illness February 16, March 23 and April 19, 2011. The employer did not have any other information about the claimant's attendance except for the fact he received a final written warning July 26, 2010, for accumulating 12 attendance points and a written warning February 8, 2011, for accumulating eight attendance points.

**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 cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant may have exceeded the allowed number of attendance points, his last three absences, and the only absences the employer had documented, were due to properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established, and therefore, benefits are allowed.

**DECISION:**

The June 27, 2011, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css