

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAMONT PRINCE
Claimant

APPEAL NO. 10A-UI-03454-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

OC: 01/24/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2010 (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 15, 2010. Claimant participated. Employer participated through human resources assistant Abby Meester, patient service manager Lori Fincher, and director of hospitality services Kelly Leonard.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a dishwasher and was separated from employment on January 25, 2010. His last day of work was January 12, 2010. He was scheduled to work on January 14 but was a no call-no show because he did not realize he was scheduled to work that day. He was issued written warnings on August 24, 2009 for an August 11, 2009 absence for a bloody nose, which required him to leave work. On April 9 he left work early due to dizziness and the employer changed the schedule so he was to work on April 10, but he was home alone without a phone and could not leave the bed. He became ill on January 12 and his doctor sent him to the emergency room where he was diagnosed with vertigo and was instructed not to work until January 25, 2010. Claimant notified the employer of his inability to work on January 14 after his doctor appointment at 9 a.m. and his shift normally started at 11:30 a.m. but the schedule was changed to 6:30 a.m. after it was posted. Any other absences were related to properly reported and documented illness.

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 § 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 if it is not contrary to public policy, 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. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. 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. Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The February 24, 2010 (reference 02) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs