

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRETT R MUHLENBURG**  
Claimant

**APPEAL NO. 11A-UI-00190-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**  
Employer

**OC: 09-26-10**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 28, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2011. The claimant did participate. The employer did participate through Elizabeth Jerome, Account Manager.

**ISSUE:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Katecho as an assembler full time beginning January 11, 2010 through January 22, 2010 when he was discharged. The claimant had a severe car accident on January 16 or 17 and did not report to work on January 18, 19, or 20 because he was in the hospital receiving treatment for a broken leg and other injuries. The claimant was physically unable to notify the employer of his absence. He asked his girlfriend to call the employer and he believed she may have just called the site he was assigned to work at. The employer learned of the claimant's absence from the work site when they were e-mailed by their customer on January 20th that the claimant had been a three day no-call-no-show. The claimant was released from the hospital by January 22, 2010 and went to the employer's work location to pick up his paycheck. At that time he told the employer about the accident and that he had been unable to call into report his absence. He was told by the employer that due to his unreported absences he was discharged and no longer eligible for additional assignment.

**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.

The employer has the burden of proof in establishing disqualifying job misconduct. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

The claimant's late call to the employer was justified because the claimant, who was suffering an asthma attack, was physically unable to call the employer until his condition sufficiently improved. *Gimbel v. EAB*, 489 N.W.2d 36 (Iowa App. 1992). The claimant was not able to timely report his absence due to the car accident, nor was he able to insure that his girlfriend reported this absence to the correct parties. When the claimant was able he did contact the employer. Under such circumstances the administrative law judge concludes the claimant properly reported his absence due to injury or illness.

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 December 28, 2010, (reference 01) 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs