

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COLLEEN A THOMPSON**  
Claimant

**APPEAL NO. 10A-UI-04283-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAMOND CRYSTAL BRANDS INC**  
Employer

**OC: 02/21/10**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated March 16, 2010, reference 01, that held she was discharged for excessive unexcused absenteeism on February 19, 2010, and benefits are denied. A hearing was held in Des Moines, Iowa on May 5, 2010. The claimant participated. Doug Enabnit, HR Manager, participated for the employer. Employer Exhibits 1-9 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 testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work on July 14, 2008, and last worked as a full-time order puller on February 19, 2010. The claimant received the employer attendance policy that provides for progressive discipline for missing work. The employer has a no-fault attendance policy that defines excessive absenteeism as missing 15 days or accumulating 8 points within a year. Absences due to properly reported illness are not excused unless they qualify under FMLA.

The claimant received written warnings for excessive absences pursuant to the employer progressive disciplinary policy from September 30, 2008 to January 8, 2010. After working a few hours on Monday, February 15, 2010, the claimant asked her supervisor to leave work early due to a flu-like illness. The claimant went to HR Manager Enabnit about leaving work due to illness, and she offered to take vacation time to cover her absence. Her request to use vacation time was denied, and Enabnit did not advise the claimant she needed to have a doctor's excuse to confirm the reason for her leaving work.

The claimant called in an absence due to illness the next day. The claimant reported to work on Thursday and Friday. After working half-a-day on Friday, HR Manager called the claimant to his

office and suspended her for excessive absences. After checking with the corporate office, Enabnit telephoned the claimant on February 22 and discharged her for excessive absenteeism.

**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(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.

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 a current act of misconduct in the suspension of the claimant on February 19, and discharge on February 22, 2010, for excessive "unexcused" absenteeism.

The employer attendance policy is not controlling on the issue of misconduct. While the claimant may have had excessive absences in violation of the policy, it is a "no-fault" policy that does not consider properly reported absences due to illness as excused. The absences of the claimant on February 15/16 were for excusable reasons and do not constitute a current act of misconduct.

**DECISION:**

The decision of the representative dated March 16, 2010, reference 01, is reversed. The claimant was not suspended on February 19, and discharged for a current act of misconduct in connection with employment on February 22, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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