

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIM ANDREWS**  
Claimant

**APPEAL NO. 08A-UI-06805-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CALERIS INC**  
Employer

**OC: 06/22/08 R: 02  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Tim Andrews filed a timely appeal from an unemployment insurance decision dated July 18, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held August 11, 2008, with Mr. Andrews participating. Erika Dethrow and Angie Nichol participated for the employer, Caleris, Inc.

**ISSUE:**

Was the claimant discharged for a final, current act of misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tim Andrews was employed by Caleris, Inc., from October 1, 2007, until June 23, 2008. He last worked as an ISP tech support person. He was discharged. The final incident leading to that discharge was his absence due to illness on June 21, 2008. Mr. Andrews notified the employer of his absence.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in this record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements that it must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8). The final absence was an absence due to illness which the claimant reported to the employer. While excessive unexcused absenteeism is misconduct, absences due to illness properly reported to the employer cannot be held against an individual for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

The administrative law judge concludes from the evidence in this record that the final incident leading to Mr. Andrews' discharge was an absence that cannot be considered unexcused for unemployment insurance purposes. No disqualification may be imposed because of the last-straw doctrine.

**DECISION:**

The unemployment insurance decision dated July 18, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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