

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL WARD
Claimant

APPEAL NO: 12A-UI-13904-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 10-21-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 16, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 21, 2012. The claimant participated in the hearing with his wife/witness Kelly Ward. Turkessa Newsone, Human Resources Generalist, 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 customer service representative for Apac Customer Services of Iowa from September 20, 2010 to October 18, 2012. The claimant had a corneal transplant and was on a medical leave of absence from May 17 to June 1, 2012. One of his corneal stitches broke and had to be re-stitched and the claimant's doctor took him off work from June 5 to July 3, 2012. The claimant's team lead requested a doctor's note from the date of his surgery and for each absence in case his Family and Medical Leave was not approved his consecutive day absences would only count as one occurrence. The claimant provided the employer with a physician's excuse each time he returned from a leave. He was on leave again from July 9 through August 13, 2012, because he had to see his doctor on an emergency basis as he had a laceration on the area of his cornea that was stitched and the cornea split. His doctor took him off work and instructed him to stay home and off his feet until he was released to return to work August 14, 2012. The claimant worked August 14, 2012, but his laceration reopened and he was forced to return to his physician. The claimant was then off work from August 29 through September 24, 2012, due to a staph infection in his eye. He returned to work September 25, 2012, with a doctor's note covering his absences. On October 1, 2012, he called his team lead to explain he was driving to Iowa City due to an emergency eye infection. The claimant told his team lead he did not know how long he would be gone and she said that was fine. The claimant's wife called Human Resources Generalist Turkessa Newsone and notified her the claimant was going to be absent for an undetermined amount of time while

taking care of his eye infection and laceration and would return with a doctor's note. Ms. Newsone told the claimant's wife he did not need to call in every day as he had been doing. The claimant received a full release to return to work October 26, 2012. The claimant reported to work October 27, 2012, and could not get on his computer. He then learned his employment was terminated.

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). The claimant had a corneal transplant and experienced severe complications which put his eyesight at risk. He provided doctor's excuses for each of his periods of absenteeism and all were related to his corneal transplant and resulting complications. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The November 16, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css