

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON TELFER

Claimant

APPEAL NO: 13A-UI-03677-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTION CORPORATION

Employer

OC: 03-03-13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2013, 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 May 1, 2013. The claimant participated in the hearing with Full-Time Union Representative Brian Ulin. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 lead man for Cargill Meat Solutions from June 2, 2003 to March 7, 2013. He was discharged for exceeding the allowed number of attendance points.

The claimant injured his lower back in a non-work-related incident January 5, 2013. He went to see his physician and received a note excusing him from work January 7 through January 11, 2013. He returned to work between January 14 and January 24, 2013, but was unable to continue working due to his back condition, returned to his physician and received another doctor's note excusing him from work. The claimant was released to return to work without restrictions March 2, 2013, and received a written warning for attendance March 3, 2013. He worked until March 7, 2013, at which time the employer terminated his employment for accumulating 35 attendance points.

The employer's handbook stated the claimant could apply for short-term disability and he did so but his request was denied by the employer's third party provider. The employer's attendance policy allows nine points per calendar year and usually consecutive day absences count as one point if accompanied by a doctor's note. The claimant had doctor's excuses covering his absences but the employer only required he provide a return to work without restriction slip and the claimant did so.

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's physician provided doctor's excuses for his absences due to his back injury. While the claimant had several absences, all were covered by doctor's notes. Additionally, the employer did not participate in the hearing to explain why the claimant was assessed one point per day for 35 days instead of receiving two points for his consecutive days absences, or why it allowed the claimant to return and work four days before it informed him that his employment was terminated for exceeding the allowed nine attendance points.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. 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 March 25, 2013, 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/pjs