

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L JOHNSON
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO. 14A-UI-01480-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/13
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 3, 2014 reference 01 that held he was discharged for excessive unexcused absenteeism and tardiness on December 18, 2013, and benefits are denied. A hearing was held on March 3, 2014. The claimant participated. Mike Repp, Staffing Coordinator, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on assignment at Control Container on April 2, 2013 and last worked as a full-time plastic fabricator on December 17, 2013. The claimant received the employer attendance policy that provides for attendance discipline when an employee accumulates unpaid time-off totaling 56, 64 and 72 hours.

The employer issued claimant a written discipline on November 5, 2013 for 58 hours of accumulated absences. He reported these absences due to illness. Claimant has a congestive heart failure issue. The employer does not consider doctor excuses.

When claimant was absent due to reported illness on November 7, the employer suspended him for three days due to accumulating 64 hours. He returned to work on November 12. When claimant made a late reported absence due to illness on December 18, he was terminated for 72 hours of absence in violation of the employer attendance policy.

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(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 misconduct in the discharge of the claimant on December 18, 2013, for excessive "unexcused" absenteeism.

Absences due to properly reported illness are not misconduct. While the employer might have been justified to discharge claimant for its attendance policy violation(s), it is not job disqualifying misconduct for unemployment eligibility.

DECISION:

The department decision dated February 3, 2014, reference 01, is reversed. The claimant was not discharged for misconduct on December 18, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs