

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY PARKER**  
Claimant

**APPEAL NO: 08A-UI-02841-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMAHA TRIBE OF NEBRASKA**  
Employer

**OC: 02-17-08 R: 12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 14, 2008, 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 April 7, 2008. The claimant participated in the hearing. 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 security officer for Omaha Tribe of Nebraska from April 4, 2007 to January 15, 2008. On approximately December 15, 2007, the claimant went to work with the flu and before he clocked in his supervisor told him to fill out a leave slip and go to the clinic. The doctor excused him December 15 and 16, 2007, and the claimant went in to fill out another leave slip December 16, 2007. On January 15, 2008, the employer notified the claimant it did not have his doctor's note excusing him December 15 or 16, 2007, and he was discharged for accumulating three attendance infractions.

**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.

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.

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 absences December 15 and 16, 2007, were properly reported and accompanied by a doctor's note which the employer subsequently lost. Additionally, the absences in question occurred one month prior to the termination and were not current acts of misconduct. Because the final absence was related to properly reported illness, and was not excessive, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The March 14, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs