

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL CULLEN**  
Claimant

**APPEAL NO: 12A-UI-13578-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONONA WIRE CORP**  
Employer

**OC: 10/21/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Michael Cullen (claimant) appealed an unemployment insurance decision dated November 7, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Monona Wire Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2012. The claimant participated in the hearing with his wife Amanda Cullen. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer from November 5, 2009 through October 22, 2012 when he was discharged from employment due to violation of the employer's attendance policy. Employees are discharged once they accumulate nine attendance points and two points are issued for a no-call/no-show. The final incident resulting in the termination occurred on October 22, 2012 when he called to report he was going to be late for his 4:00 p.m. shift due to a flat tire. The employer called him and discharged him before his schedule even started.

The claimant received one written warning for attendance in April 2012 when he had six attendance points. One point dropped off his record but he accumulated another one when he was absent due to properly reported illness on October 16, 2012. The claimant was a no-call/no-show on October 17, 2012. He went to the hospital that day around 3:00 p.m. but did

not report his absence because he was stressed out about chest pains. The claimant returned to work on October 18, 2012 and provided the employer with the medical excuse. He understood that absence was excused because he was allowed to continue working.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 22, 2012 for violation of the employer's attendance policy. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance

policy. 871 IAC 24.32(7); *Cosper, supra*; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007).

The claimant's absence on October 16, 2012 was excused as it was due to properly reported illness. Consequently, his discharge was based on the no-call/no-show on October 17, 2012. A single unexcused absence does not constitute excessive unexcused absenteeism. *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated November 7, 2012, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/tll