

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD J PALARDY
Claimant

APPEAL NO. 13A-UI-02634-ST

UNIPARTS OLSEN INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 27, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on January 27, 2013, and benefits are denied. A hearing was held on April 1, 2013. The claimant participated. The employer did not participate. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

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 began employment on May 29, 2012 and last worked as a grinder in training on December 17, 2012. The claimant was granted a medical leave of absence due to injury. He provided doctor excuses to the employer during the period of his absence.

Claimant had a doctor appointment on January 15, 2013. He advised the employer he was not released by his doctor to return to work and he provided a written statement. The employer terminated claimant's employment effective January 17 for having exhausted his medical leave and absences from work. Claimant has received an unrestricted work release and he has enlisted in military service.

The designated employer representative was not available at the phone number provided when called for the hearing.

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 January 17, 2013, for excessive "unexcused" absenteeism. An individual who is absent from employment due to doctor care for injury and provides medical statements to the employer to support it is not excessively absent for unexcused reasons. An employee who is terminated as being unable to return to work due to a doctor imposed work restriction on the basis of exhausted leave of absence is not job disqualifying misconduct.

DECISION:

The decision of the representative dated February 27, 2013, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on January 17, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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