

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY R SKOVRONSKI**  
Claimant

**APPEAL NO. 11A-UI-08253-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT FOODS GLOBAL INC**  
Employer

**OC: 05/15/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 8, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 27, 2011. Claimant participated. Employer participated through Associate Human Resources Manager Julie Stokes.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on May 1, 2011. His last day of work was April 14, 2011. The employer claims he was a no-call, no-show on April 29 and 30, 2011, but claimant recalls reporting his absence on April 29. He did not call on April 30 because he was not aware he was scheduled and believed the employer and union to have an informal agreement to not schedule employees on Saturday if they had missed days immediately preceding the Saturday. He called the employer to report all other absences due to illness from April 15 through 28 but was not scheduled Saturday, April 16, or 23, 2011. He continued to call in while filing a grievance, which was denied. The employer did not have more information about prior warnings or attendance history.

**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 § 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Since the employer presented no evidence about prior warnings or absenteeism and did not rebut claimant's testimony that he did call to report his absence on April 30, 2011, the single no-call, no-show on April 30, 2011 does not meet the excessive absenteeism requirement for disqualification.

#### **DECISION:**

The June 8, 2011 (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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw