

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN D MONROE**  
Claimant

**APPEAL NO. 09A-UI-01346-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 01/04/09 R: 03  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 27, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 16, 2009. Claimant participated. Employer participated through Brian Sampson. Claimant's Exhibit A was received.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a salesperson and was employed from March 12, 2008 until November 27, 2008 when he was discharged. He was scheduled to work on November 25 and was a no-call/no-show because he had a reaction to a cortisone injection in his heel and went to the emergency room in the early morning of November 25 and returned home about 4:30 a.m. He attempted but was unsuccessful at reaching employer by phone and the medication made him excessively drowsy and caused him to sleep through his shift. He called upon awakening and left a message for his supervisor indicating he would return to work on November 27 with a medical excuse. (Claimant's Exhibit A) When he did, employer declined to look at or accept it.

**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.

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).

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. Although he did not report the final absence, he had a good cause for not doing so because of the side effect of the medication given to him and unsuccessful attempts to call before his shift. Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The January 27, 2009, 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/css