

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STONE ROBERTSON
Claimant

APPEAL NO: 14A-UI-02358-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 01/05/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 18, 2014, 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 March 25, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

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 over-the-road truck driver for Heartland Express from January 30, 2013 to November 6, 2013. He was discharged when he was unable to return from an illness within the time limit set by the employer.

The claimant has a hernia that was discovered in April 20, 2013, and then suffered whiplash in a work-related accident May 20, 2013. On September 17, 2013, he was experiencing flu-like symptoms and called the employer to report he could not run his route. The claimant saw his treating physician and he noted the claimant's hernia had not been treated and stated he could not work on the claimant's whiplash/neck problem until the hernia was fixed. He told the claimant it would be dangerous for him to drive at that time. The claimant kept the employer informed of his status throughout this procedure and underwent surgery to correct his hernia. The claimant spoke to the employer October 1, 2013, and was told he had to have a full release to return to work by October 17, 2013. The employer did not tell the claimant what would happen if he could not provide a full release by that date. The claimant contacted the employer shortly before October 17, 2013, and notified it he would not be released by October 17, 2013.

On November 1, 2013, the claimant received a note from his doctor stating he would be able to return to work in two to three weeks. On November 6, 2013, the claimant was informed his employment was terminated because he was unable to return to work without restriction at that time but he was told he could return as a new hire when he obtained a full release.

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.

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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant was under the care and treatment of physicians and surgeons and due to his hernia and whiplash neck injury, suffered during an accident at work, he was unable to return to work with a full release by October 17, 2013, the date set by the employer. The claimant maintained contact with the employer and continued to keep it apprised of his condition and possible release date but despite that communication the employer terminated his employment because of his illness and injury November 6, 2013. Because the final absence was related to properly reported illness and injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

DECISION:

The February 18, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs