

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES A BEST
Claimant

APPEAL NO. 08A-UI-11685-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST WEST STAFFING LLC
Employer

OC: 07/13/08 R: 04
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 10, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 30, 2008. Claimant participated with Peggy Knisley. Employer participated through Michelle Mutchler.

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 production worker and was employed from March 5, 2006 until November 19, 2008 when he was discharged. He last missed work on November 19 when Knisley called in sick for him since he had a sore throat. Although the handbook requires an employee to call personally; even had he reported the absence himself he still would have been discharged. No warning was issued about following the handbook policy but he was warned about attendance verbally on March 14, 2007, verbally and in writing on May 2, 2008, and by a last chance agreement on October 20, 2008. He was

absent November 6, sick December 11, and absent December 27, 2007. He was ill February 11, 2008, absent February 25, sick March 6, 11, 31, April 3, 4, 22, and May 1; absent June 16, a no call-no show on June 20, ill July 23, absent September 17, tardy September 23, and sick October 17, 2008.

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.

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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. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. 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. 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 December 10, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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