

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL R RICE**  
Claimant

**APPEAL NO. 08A-UI-00260-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALANIZ**  
Employer

**OC: 12/09/07 R: 04**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alaniz filed an appeal from a representative's decision dated January 2, 2008, reference 01, which held that no disqualification would be imposed regarding Daniel Rice's separation from employment. After due notice was issued, a hearing was held by telephone on January 24, 2008. Mr. Rice participated personally. The employer participated by Rodney Stewart, Production Manager, and Shelby Trautman, Human Resources Generalist. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Rice was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rice was employed by Alaniz from March 16 until December 13, 2007 as a full-time machine operator. He was discharged due to unacceptable attendance. The employer tracks attendance on a point system. An individual is subject to discharge when he accumulates nine attendance points.

Mr. Rice accumulated a number of absences due to his own illness. He also left work early on some occasions, but never without permission. He missed work on April 12 because his wife was ill. Mr. Rice's mother passed away on May 16 and he was told to take as long as he needed, even beyond the three days of paid bereavement leave. The time he took off in relation to his mother's death was not counted against his attendance. He was absent on June 20 because of an appointment with his lawyer. Mr. Rice was ten minutes late reporting for work on June 27. He was absent on July 20 because he had to move. He was 35 minutes late for work on July 31. He missed work on October 13 because he did not have a ride to work. Mr. Rice received a written warning about his attendance on October 30, 2007.

Mr. Rice was 33 minutes late on November 9. He was absent on November 15 due to a misunderstanding. Because of medical restrictions, he was not always able to work a full day. He was expected to work on Thursday, his day off, if he had not worked sufficient hours during the earlier part of the week. This had not been adequately conveyed to Mr. Rice and, therefore, he did not know he had to work on Thursday, November 15. He called on December 10 to report that he would be absent because he was going to see the doctor. He provided a doctor's excuse verifying the need to be absent on December 10. He did not call on December 11 but did bring in a doctor's excuse on December 11 verifying that he was seen by the doctor on that date.

Mr. Rice called his supervisor on December 12 to determine which plant he was to report to that day. He was told not to return until December 17. However, he was discharged effective December 13 because he accumulated more points than allowed. Attendance was the sole reason for the separation.

### **REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. There must be a current act of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8).

Mr. Rice's discharge was prompted by his absence of December 12. Although he did not report for work on that date, he was absent only because his supervisor told him not to return until December 17. He was absent on December 11 due to illness. The employer does not have a record of him calling on that date and Mr. Rice could not remember whether he called. However, he did provide a doctor's note verifying the need to be absent. Although the absence was not timely reported, the employer did receive documentation of the medical need to be absent the same day as the absence. Given his history of always properly reporting his absences, the administrative law judge concludes that the failure to give notice until after the start of his shift on December 11 was not so substantial a deviation from the employer's standards as to constitute an act of misconduct.

Prior to December 11, Mr. Rice's last unexcused absence was that of November 9, when he was 33 minutes late. An unexcused absence that occurred on November 9 would not constitute a current act in relation to a discharge that occurred on December 13. Inasmuch as there was no current act of misconduct, the administrative law judge is not free to consider other, past acts that might constitute misconduct. While the employer may have had good cause to discharge Mr. Rice because of its attendance policy, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that deliberate and intentional misconduct has not been established and benefits are allowed.

**DECISION:**

The representative's decision dated January 2, 2008, reference 01, is hereby affirmed. Mr. Rice was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw