

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTO MEDINA
Claimant

APPEAL NO: 15A-UI-04753-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FARMLAND CORP
Employer

**OC: 12/28/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2015, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Becky Jacobsen, Human Resources Manager, participated in the hearing on behalf of the employer.

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 production worker for Smithfield Farmland Corp. from February 3, 2015 to March 19, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on March 18, 2015.

The claimant was on a 45-working day, new employee probationary period. Employees are assessed two attendance points for a full day absence and one point for an incident of tardiness or leaving early of more than half his shift.

On February 11, 2015, the claimant was late for exercises and his probation was extended by 20 days. The claimant called in and reported he would not be in February 28, 2015, due to personal business and received two points and one occurrence. He left five and one-half hours early March 6, 2015, with permission, and received one point and one occurrence. The claimant called in and reported he was ill and would not be at work March 17, 2015, and received two points and one occurrence. He was a no-call no-show March 18, 2015, and received two points and one occurrence. The claimant reported for work March 19, 2015, with a doctor's excuse but the employer terminated his employment for exceeding three occurrences within his probationary period.

The employer did not issue any verbal or written warnings to the claimant prior to his termination. It relies on the claimant to understand his job is in jeopardy during the probation period if his probation is extended. It also provides weekly progress reports to employees and the claimant was told his attendance was not acceptable.

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.

Iowa Admin. Code r. 871-24.32(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.

Although the claimant violated the employer's attendance policy, his last absences were due to illness. While the claimant failed to properly report his March 18, 2015, absence he did provide a doctor's note and the employer testified he would have been discharged regardless of whether he called in to report his absence. Because the final absence was related to illness and accompanied by a doctor's excuse, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The April 9, 2015, reference 06, decision is affirmed. 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