

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER G STANSBERRY**  
Claimant

**APPEAL NO. 12A-UI-02412-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEXTER LAUNDRY INC**  
Employer

**OC: 01/22/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated February 29, 2012, reference 01, that held he was discharged for excessive unexcused absenteeism on January 25, 2012, and which denied benefits. A hearing was held on April 10, 2012. The claimant participated. The employer declined to participate. Employer Exhibits 1a through 14e were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began employment on August 9, 2004 and last worked as a full-time production/welder on January 25, 2012. The claimant knew about the employer's attendance policy, which is contained in the union agreement.

The claimant received warnings about his absenteeism during the course of employment. The employer has a 5 percent absence formula/standard measured during a rolling six-month period of employment. Claimant had received a last chance attendance warning but he did not understand his job was in jeopardy.

Claimant understood he was entitled to FMLA for his daughter's medical appointments and treatment for colon cancer complicated by a genetic blood disorder. He would call in these absences from work stating he was using FMLA and leave recorded messages.

The employer lists the last two absences from work for January 10, and January 23, 2012. The employer records January 10 as an absence for personal business and January 23 as sick. Claimant believes these absences are due to FMLA.

The employer terminated claimant on January 25, 2012 for chronic accumulative absenteeism. The claimant signed for it with the statement pending FMLA paperwork.

The employer representative was called for the hearing, but declined to participate. She requested the employer exhibits be considered as its evidence in this matter.

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

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on January 25, 2012, for excessive "unexcused" absenteeism.

The employer's evidence is the most recent absence of January 23 is due to illness. While the claimant's FMLA due to his daughter's serious health issue puts at issue whether his absences were excessive for non-excusable reasons (that is not disqualifying misconduct), the most recent absence due to illness is not misconduct. The employer is required to establish a current act, and this absence is excusable.

**DECISION:**

The representative's decision dated February 29, 2012, reference 01, is reversed. The claimant was not discharged for a current act of misconduct in connection with employment on January 25, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw