

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE QUEZADA GARCIA**  
Claimant

**APPEAL NO: 15A-UI-10488-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN MORRELL & CO**  
Employer

**OC: 08/09/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 28, 2015, 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 October 1, 2015. The claimant participated in the hearing with Interpreter Ike Rocha. The employer did not provide a phone number where it could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

**ISSUES:**

The issues are whether the claimant's appeal is timely and 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: A disqualification decision was mailed to the claimant's last-known address of record on August 28, 2015. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 7, 2015. The appeal was not filed until September 18, 2015, which is after the date noticed on the disqualification decision. The claimant does not read or speak English and the representative's letter was in English. It took the claimant a number of days to find someone who spoke both English and Spanish and when he did so the man read the decision to the claimant, who then went to his local Workforce office and filed his appeal September 18, 2015. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time production worker for John Morrell from August 14, 2014 to July 28, 2015. He was discharged for exceeding the employer's allowed number of attendance points. The employer's no-fault attendance policy states employees will be discharged upon reaching 12 points. The claimant had 13 points at the time of termination.

The claimant suffers from schizophrenia and was also diagnosed with vertigo. Eleven of the claimant's 13 points were due to his illnesses and were properly reported. One absence was due to personal reasons. The other point resulted from the claimant reporting his absence after the start of his shift July 25, 2015. On that date the claimant was with a friend who was taking him to work and forgot his phone at his friend's house. The claimant suffered an attack on July 25, 2015, as his friend was taking him to work and consequently he could not go to work that day. The employer's number was in his phone and because the claimant did not have his phone with him at the time he called the employer when his friend took him back to his house and the claimant was then able to retrieve his phone and call the employer between 6:30 and 6:45 a.m. The employer terminated the claimant's employment July 28, 2015, for exceeding the allowed number of attendance points.

### **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.

The claimant suffered an attack on his way to work July 25, 2015. He had forgotten his phone at his friend's house and was unable to call the employer to report his absence until sometime between 6:30 and 6:45 a.m. The claimant had 11 points as of July 24, 2015. He received one point for his absence due to illness and one point for a late call July 25, 2015, which placed him over the allowed 12 attendance points. All of the claimant's previous absences, with the exception of one, were due to properly reported illness.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations.

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The August 28, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css