

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JOHN L SCHROEDER  
218 HIGH ST  
SEARSBORO IA 50242-7576**

**BISOM TRUCK LINE INC  
PO BOX 306  
NEWTON IA 50208-0306**

**Appeal Number: 06A-UI-01687-LT  
OC: 01-15-05 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct  
Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 3, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 28, 2006. Claimant did participate. Employer did participate through Mike Udelhoven. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time over-the-road driver from 2003 after surgery through January 5, 2006 when Mike Udelhoven said he "would have to let him go while he worked this out." While working in a factory prior to this employment, claimant sustained a back injury and retrained for

truck driving. William Boulden, M.D., took claimant off work until after surgery on his herniated disc and issued restrictions lifting and carrying but not driving. Claimant notified Harold, dispatcher, about his medical condition the last week of December 2005. He had an MRI December 27 and received the results a week later on January 5, 2006. Surgery was scheduled within two weeks of January 5 but he did not have it since he lost his medical insurance when Udelhoven fired him.

There was no discussion of a leave of absence so he could retain insurance. While claimant told Udelhoven that he was not sure he would be able to work after surgery no medical evidence was obtained to support that possibility. There has been no initial fact-finding interview or decision on the issue of claimant's medical ability to work.

#### 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 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(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 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, 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. Claimant's medical work restrictions and anticipated absence for surgery and recovery are not evidence of misconduct and no disqualification is imposed.

#### DECISION:

The February 3, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The medical ability to work issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

dml/tjc