

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KANG VANG**  
Claimant

**APPEAL NO: 13A-UI-01367-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 01-06-13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 4, 2013, 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 May 13, 2013. The claimant participated in the hearing with Interpreter Doua Lor. Will Sagar, Complex Human Resources Officer, 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 forklift operator for Tyson Fresh Meats from June 13, 2011 to January 10, 2013. He was discharged from employment for excessive absenteeism.

The employer basically uses a no-fault attendance policy and employees are terminated upon reaching 14 points within a rolling 12-month period. An absence that is properly reported is assessed one point; an absence that is not properly reported is assessed three points; an incident of tardiness that is properly reported is assessed one-half point; an unexcused incident of tardiness that is not properly reported is assessed one point; leaving early with permission is assessed one-half point; leaving early without permission is assessed one point; and a no-call no-show is assessed three points. If an employee is absent five consecutive days due to illness with a doctor's excuse he is placed on a leave of absence and does not receive any points. He does not have to call in every day if the employer is in receipt of the doctor's excuse prior to the day of the absences.

The claimant was absent due to non-work-related illness and received one point March 2, April 6, April 26, June 21, June 22 and August 6, 2012. He left early at the employer's direction due to illness July 3 and October 30, 2012, and received one-half point for each occurrence. The claimant was absent due to properly reported illness January 2, 3, 5, 7 and 8, 2013, and

received one point per absence. He called in two minutes late January 4, 2013, and received three points for that absence. The claimant had a doctor's excuse covering his absences between January 2 and January 8, 2013. The employer terminated his employment January 10, 2013, for accumulating 15 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 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 cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did violate the employer's attendance policy by accumulating 15 points on a scale of 14 points between March 2, 2012 and January 8, 2013, all of his absences, with the exception of the two-minute late call January 4, 2013, were properly reported and most featured a doctor's excuse. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The February 4, 2013, 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/pjs