

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL ROBINSON
Claimant

APPEAL NO: 16A-UI-05829-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC
Employer

OC: 05/01/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2016, reference 01, 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 June 10, 2016. 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. Cort Brown, Team Leader of Vocational Services, 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 direct support professional for The Easter Seal Society of Iowa from February 1, 2016 to April 21, 2016. He was discharged for “chronic” absenteeism and failing to properly report his last absence.

The claimant was absent due to properly reported illness February 2, 8, 9, 22, 23, March 1 through 4, 30, 31, April 1, and April 4, 5, and 6, 2016. On April 6, 2016, Team Leader of Vocational Services Cort Brown met with the claimant about his absences and the claimant explained he suffers from major depression and was going through a medication change. On April 7, 2016, Mr. Brown met with the claimant, provided him a list of resources for his depression, and coached him on the impact chronic absenteeism has on co-workers and clients. He informed the claimant that any additional absences could result in the termination of his employment.

On April 20, 2016, the claimant was absent and texted a co-worker rather than notifying Mr. Brown. The co-worker mentioned the claimant's absence to Mr. Brown around 9:45 a.m. Mr. Brown sent the claimant a text message saying he heard the claimant was ill but indicated

the claimant had not contacted him directly. The claimant stated he was sick and made a mistake in forgetting to add Mr. Brown to the text message he sent earlier in the day. On April 21, 2015, Mr. Brown met with the claimant and notified him his employment was terminated for chronic absenteeism.

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.

While the claimant failed to properly report his absence April 20, 2016, all of his other absences were related to properly reported illness. One incident of failing to properly report an absence cannot be considered misconduct.

While there can be no doubt that the employer was frustrated with the claimant's attendance record given that he was absent 16 days during the approximate 11 weeks he was employed by the employer, as stated above, absences due to properly reported illnesses are not considered misconduct under Iowa law. That leaves only the April 20, 2016, absence that can be considered an unexcused absence and one unexcused absence is not excessive or misconduct under Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 20, 2016, reference 01, 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

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