

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN L GINES**

Claimant

**APPEAL NO. 10A-UI-04710-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCHER-DANIELS-MIDLAND CO**

Employer

**OC: 02-14-10**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 11, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2010. The claimant did participate and was represented by Andy LeGrant, Attorney at Law. The employer did participate through Sam Fowler. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a plant technician loader full time beginning September 18, 2008 through February 6, 2009 when he was discharged. The claimant was off work ill on February 5 and 6. He contacted the employer on February 5 and wanted to speak to a supervisor to report his absence but no supervisor was available to speak with him. He was so heavily medicated he did not call the employer back. The claimant was physically unable to report to work or to try and call in again after taking his medication. The claimant reported to the employer on February 6 with a doctor's excuse taking him off work for a period of time including February 5 and 6. The employer would not accept the excuse as under their no-fault attendance policy even absences related to illness are not excused. The claimant was discharged on February 6, for violation of the attendance policy.

**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.

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 if it is not contrary to public policy, 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. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant tried to report his absence on February 5, but the supervisor was not available to talk to him when he was physically able to call. The employer would not accept the doctor's note on February 6.

Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The March 11, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css