

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARRY NASH**  
Claimant

**APPEAL NO: 12A-UI-12387-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MUSCO SPORTS LIGHTING LLC**  
Employer

**OC: 09-16-12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 10, 2012, 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 December 10, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 assembler for Musco Sports Lighting from September 24, 2005 to September 18, 2012. The claimant suffers from several health issues including severe acid reflux that required surgery on his esophagus and cysts behind his eyes. He was on intermittent family and medical leave (FML) for his medical appointments but not for his absences due to illness. The claimant is not aware of the employer's attendance policy or if it is a point based system or based on a supervisor or human resources discretion. The employer issued the claimant a verbal warning regarding his attendance (date unknown) and a written warning/last chance agreement in mid-August 2012. The written warning stated if the claimant had another absence during the next six months his employment would be terminated.

The claimant's daughter was being stalked by a boy at school and had to call 911 on two occasions after the written warning was issued. The claimant missed two partial days after being called at work but with flex time was able to make that time up. On September 11 and 12, 2012, the claimant's acid reflux flared and his esophagus was bleeding. Additionally, the cysts behind his eyes were also bothering him. He called the employer both days to report he would not be in due to illness. The employer terminated his employment September 18, 2012.

**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). 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 rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The October 10, 2012, 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