

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN MURPHY**  
Claimant

**APPEAL NO: 15A-UI-04681-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STELLAR INDUSTRIES INC**  
Employer

**OC: 03/29/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 14, 2015, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 28, 2015. The claimant participated in the hearing. Pam Jones, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**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 truck assembler for Stellar Industries from July 11, 2011 to April 2, 2015. He was discharged for a final incident of absenteeism that occurred April 1, 2015.

The employer does not have a specific attendance policy. When it feels an employee's attendance has become unacceptable it issues a corrective action report to the employee and if the absenteeism continues it issues written warnings to the employee before termination results. An employee must call 30 minutes prior to the start of his shift to report an absence. Any absence without a 24-hour notice is considered unexcused.

The claimant was absent due to illness May 5, June 30, September 5, November 6 and December 9, 2014 (Employer's Exhibit One). He took unpaid personal days off January 3, March 31, May 23, June 20, August 11, September 11, September 16, September 25, and December 19, 2014 (Employer's Exhibit One).

He was absent January 19 and 20, February 12 and 28, 2015, due to illness and February 25, 2015, due to weather (Employer's Exhibit One). He took unscheduled vacation days February 4 and March 12, 2015. His last absence occurred April 1, 2015, when he called in to report his absence due to a sinus infection (Employer's Exhibit One).

The claimant received a corrective action report May 21, 2014, due to his attendance. On October 3, 2014, the employer issued the claimant a written warning stating any future unscheduled absences would result in further disciplinary action up to and including termination. He received another written warning February 5, 2015, due to his attendance. That warning also indicated any further unscheduled absences would result in disciplinary action up to and including termination. The employer terminated the claimant's employment April 2, 2015, following the April 1, 2015, absence.

#### **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.

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.

The employer does not have a defined, specific attendance policy that allows employees to know at which point they will face disciplinary action or termination. While the claimant's attendance record was not overly impressive and he earned a corrective action report May 21, 2014, and written warnings October 3, 2014, and February 5, 2015, because the claimant's final absence was related to properly reported illness, however, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The April 14, 2015, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css