

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE D MORRIS
Claimant

APPEAL NO: 06A-UI-08995-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US GRAIN STORAGE SYSTEMS INC
Employer

**OC: 08/13/06 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joe Morris filed an appeal from a representative's decision dated September 1, 2006, reference 01, which denied benefits based on his separation from US Grain Storage Systems, Inc. After due notice was issued, a hearing was held by telephone on September 25, 2006. Mr. Morris participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Morris was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Morris was employed by US Grain Storage Systems, Inc. from October 6, 2005 until August 14, 2006 as a full-time laborer. On August 11, 2006, the employer had someone retrieve Mr. Morris from the job site in Fort Dodge because he had a toothache and needed to see the dentist. Mr. Morris was scheduled to go to Nebraska with a crew on Monday, August 14.

On the morning of August 14, Mr. Morris notified the employer that he would not be at work and that he had a dental appointment for August 16. He was notified of his discharge the same day. Mr. Morris had had problems in the past arriving at work on time. Other than August 14, the specific dates on which he was absent or late are unknown. He had received verbal warnings about his attendance.

REASONING AND CONCLUSIONS OF LAW:

Mr. Morris was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if

he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

The employer had the burden of establishing a current act of misconduct. See 871 IAC 24.32(8). The final absence that caused Mr. Morris' discharge was on August 14. He was absent because he needed dental treatment, a fact that was known to the employer. He called the employer to advise of the absence and was discharged the same day. Because the absence was due to the need for medical care and was properly reported, it is an excused absence.

Mr. Morris acknowledged that he had been late reporting to work on past occasions. According to the employer's fact-finding statement, he had not missed any time from work after being switched to the road crew on July 7, 2006. Since he had not missed any time after July 7, the administrative law judge must conclude that there were no periods of unexcused absenteeism between July 7 and August 14. Any period of unexcused absenteeism prior to July 7 would not constitute a current act of misconduct as is required for a disqualification from benefits.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Mr. Morris was discharged for a current act of misconduct. Therefore, benefits are allowed.

DECISION:

The representative's decision dated September 1, 2006, reference 01, is hereby reversed. Mr. Morris was discharged but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw