

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ZACH L FOWLER

Claimant

TYSON FRESH MEATS INC

Employer

APPEAL 14A-UI-05516-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/06/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2014, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2014. Claimant participated. Employer participated through human resource clerk Kristi Fox.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance worker and was separated from employment on May 1, 2014. His last day of work was April 28, 2014. On Sunday, April 20 his supervisor Alfredo Vega recorded him as a no-call/no-show. Vega did not participate. Claimant was vomiting so his girlfriend took him to the hospital on Sunday. This recurring illness had happened before without a problem when he missed work for the same reason from April 6 through April 12, 2014. His supervisor did not tell him that the lack of policy enforcement had changed. On Monday, April 21, he brought in paperwork for a medical leave of absence from April 20 through April 28. When he returned, his supervisor told him since he received three points from his no-call/no-show absence, which put him at ten points, which resulted in his termination from employment. The employer has a no-fault attendance policy that assigns all absences at least one point, regardless of reason.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

The employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the absences were related to properly reported illness, given the past lax policy enforcement without notice of change of that application, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Accordingly, benefits are allowed effective April 27, 2014, provided he is otherwise eligible.

DECISION:

The May 19, 2014, (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/can