

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE HENDERSON**  
Claimant

**APPEAL NO. 06A-UI-11429-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEE CO**  
Employer

**OC: 10-20-06 R: 04  
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 28, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 13, 2006. The claimant participated in the hearing. Mike Pieper, Owner/Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A and Employer's Exhibit One were 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 farrowing worker for Cee Company from December 26, 2005 to October 27, 2006. The employer listed the claimant as a no-call, no-show October 20, 23, and 24, 2006, and terminated her for violating its policy by accumulating three no-call no-show absences. On October 24, 2006, the claimant called the employer at 10:50 a.m. for her 6:00 a.m. shift and said she had a doctor's excuse and would have her boyfriend bring it in that day so as to comply with the employer's policy requiring doctor's notes be provided within 24 hours of receipt, but her boyfriend never brought the note in to the employer and the employer did not know the anticipated duration of the absence. The claimant showed up October 27, 2006, to pick up her check and provided a note for October 20, 23 and 24, and another note for October 24 through October 27, 2006. The employer did not have any documentation excusing the claimant October 20, 23 and 24, 2006. The claimant testified she provided a doctor's note October 19, 2006, excusing her until October 23, 2006, but the employer does not have a record of that excuse. She agrees she did not call October 20 or October 23, 2006, but testified she called the afternoon of October 24, 2006, to say she had a doctor's note and would not be in for one week and her boyfriend would bring the note in if they had gas money. The employer terminated her employment for the three no-calls, no-shows

**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). While the claimant failed to properly report all of her absences, and was aware of the proper reporting procedures, she did have a doctor's note for the three no-call, no-show dates and it seems unlikely she would fail to give that to the employer, even if maybe not in a timely manner. If she had simply said she was sick without documentation, or failed to call in without documentation, the administrative law judge would be more inclined to find in favor of the employer. In this case, however, because the claimant did provide doctor's excuses covering her absences, even though her absence were not timely reported, the administrative law judge must conclude that she was discharged for absences due to illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Therefore, benefits must be allowed.

**DECISION:**

The November 28, 2006, 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/kjw