

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARL J SCHOULTE
Claimant

APPEAL NO. 09A-UI-05510-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKWELL COLLINS INC
Employer

**Original Claim: 03-08-09
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2009. The claimant did participate and was represented by Richard Johnson, Attorney at Law. The employer did participate through (representative) Tricia Olson, Senior Human Resources Generalist, and John Kaiser, Operations Facilitator. Claimant's Exhibits One through Ten were entered and received into the record. Employer's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a test technician, full-time, beginning August 9, 1994, through February 24, 2009, when he was discharged.

The claimant has been diagnosed as suffering from anxiety disorder that makes it difficult for him to call into work when he is going to be absent. The claimant was late to work on February 12. Under the employer's policy, the claimant was to call in prior to his 7:00 a.m. start time to report that he would be late to or absent from work. The claimant was suffering from an anxiety attack prior to 7:00 a.m. and was unable, due to his mental illness, to call into work in a timely manner to report that he would be late to work. The claimant had recovered enough from his anxiety attack to call the employer at 7:15 a.m. He then reported for work and completed his work shift. He was discharged on February 24, for calling in late to work on February 12 in contravention of the employer's attendance policy.

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 § 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.

In *Gimble v EAB*, 489 N.W.2d 36 (Iowa App. 1992), the claimant's late call to the employer was justified because the claimant, who was suffering an asthma attack, was physically unable to call the employer until his condition sufficiently improved.

Like the claimant in *Gimble*, the claimant in this case was unable to make a timely call to his employer due to his anxiety disorder. He lived alone and had no one else to make the call for him. Under such circumstances, the administrative law judge cannot conclude that the claimant was intentionally or volitionally failing to report his tardiness in a timely manner. When the claimant's anxiety attack eased and he had sufficiently recovered, he immediately reported his absence to the employer. The claimant's tardiness due to his mental illness was properly reported.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly-reported illness or injury cannot constitute job misconduct, since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good-faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which he was discharged was related to properly-reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 27, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw