

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN COLLUM
Claimant

APPEAL NO. 09A-UI-08032-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPASS ONE LLC
Employer

**Original Claim: 04-19-09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2009, 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 June 19, 2009. The claimant participated in the hearing. Stacey Kilstofte, Director of Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibit A 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 dishwasher for Compass One from November 17, 2006 to February 2, 2009. The claimant was on FMLA for a non-work-related injury from October 13, 2008 to February 2, 2009. He was unable to return to full-time work February 2, 2009, but was restricted to four hours per day, and consequently the employer terminated the claimant's employment because his FMLA expired and he did not provide additional information for another leave of absence. He did provide a full medical release without restrictions when asked to do so during the appeal hearing (Claimant's Exhibit A) but did not return to the employer when he received a full release in April 2009 because his employment had been terminated.

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). The claimant had not received a full release to return to work at the time his FMLA ran out. When he was fully released in April 2009 he did not go back to the employer to offer his services because his employment was terminated February 2, 2009. There is no evidence the claimant intended to quit his job. Because the final absence was related to properly-reported illness, no final or current incident of unexcused absenteeism has been established and benefits are allowed.

DECISION:

The May 20, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw