

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BILLYR SMITH**  
Claimant

**VAN DIEST SUPPLY CO**  
Employer

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

**APPEAL NO. 09A-UI-09948-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/09**

**Claimant: Respondent (1)**

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Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Van Diest Supply Company filed an appeal from a representative's decision dated July 8, 2009, reference 02, which held that no disqualification would be imposed regarding Billy Smith's separation from employment. After due notice was issued, a hearing was held by telephone on July 28, 2009. Mr. Smith participated personally. The employer participated by Carolyn Cross, Personnel Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Smith was employed by Van Diest Supply Company from November 11, 2008 until June 1, 2009 as a full-time production operator. He was discharged because of his attendance. Employees are given a bank of eight attendance points and lose a point for each unscheduled absence. When an individual reaches a zero balance, he is subject to discharge. An individual's point status is provided on the weekly pay stub.

Prior to June 1, 2009, all of Mr. Smith's absences were due to illness and were properly reported. There were no occasions of tardiness. He had not received any warnings regarding his attendance, either verbally or in writing. As of June 1, he had one attendance point remaining. He reported to work on June 1 and was sent home because he was not clean-shaven as required by the employer's policy. The policy is in force to ensure that respirators fit properly. Mr. Smith did not shave on June 1 because he had moved over the preceding weekend and his razor was packed away. The fact that he was sent home caused him to lose his remaining attendance point. Therefore, he was discharged effective June 1, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

It is clear that all of Mr. Smith's absences prior to June 1 were excused as they were all due to illness and were all properly reported. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. The absence of June 1 was due solely to the fact that Mr. Smith was sent home by the employer because he had not shaved. He did not have a history of violating the rule requiring him to be clean-shaven. The violation occurred on this occasion solely because his razor was packed away due to his recent move. Although he was in violation of the employer's policy, his conduct did not evince a willful or wanton disregard of the employer's standards.

Even if the administrative law judge were to conclude that the absence of June 1 was unexcused, it would not, under the circumstances, be sufficient to establish excessive unexcused absenteeism. The evidence failed to establish a deliberate and substantial disregard of the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reason stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated July 8, 2009, reference 02, is hereby affirmed. Mr. Smith was discharged by Van Diest Supply Company but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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