

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEDRO F SANCHEZ**  
Claimant

**A & M SERVICES INC**  
Employer

**APPEAL NO: 11A-UI-04273-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/27/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 28, 2011, reference 01, that held he was discharged for excessive unexcused absenteeism on February 14, 2011, and benefits are denied. A hearing was held in Spencer, Iowa on May 23, 2011. The claimant participated. Dennis Kasperbauer, President, participated for the employer. Employer Exhibit One and Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time route driver on October 20, 2008, and last worked for the employer on February 22, 2011. The claimant was injured in a company vehicle due to a roll-over accident on February 1, and he was treated by an emergency room doctor for a cut on his forehead. The employer filed a workers' compensation claim and he was sent to Dr. Martin for an examination.

Claimant worked February 7 thru 11, and he saw Dr. Martin on the 14th. Martin released him to return to work without restrictions for his neck and back injuries, but sent him to physical therapy (PT) for treatment. The claimant worked a brief period on February 15, but stated he could not complete his route as he was physically unable to work and left. Claimant did not report for work February 16 – 18, 21. He came in for work on February 22, but advised he could not perform his job. The claimant did not obtain any doctor note excusing him from work. The employer discharged claimant for unexcused absenteeism on February 23.

The February 25 PT report states: Pedro (meaning claimant) is doing very well. He is pleased with his progress. He states no further pain in the neck or back. He was discharged from treatment.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has established that the claimant was discharged for excessive unexcused absenteeism on February 23, 2011.

The claimant received an unrestricted release to return to work from a doctor, and he did work for the employer without issue for one week. He was absent from work for five days without a medical excuse though he participated in PT. The PT report corroborates the doctor release that claimant progressed well to his February 25 discharge from care date that does not support his testimony he was physically unable to work. Because of the workers' compensation claim, the employer had the right to rely on the doctor statement claimant could work, and his period of absence is not excused. His unexcused absenteeism constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated March 28, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on February 23, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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