

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A BAILEY
Claimant

APPEAL NO. 08A-UI-08061-H2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 08-03-08 R: 01
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 August 29, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 24, 2008. The claimant did participate. The employer did participate through Daniel Olhausen, Office Manager. Employer's Exhibit One was received. Claimant's Exhibit A was received.

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 warehouse checker full time beginning November 19, 2007 through August 6, 2008 when he was discharged.

The claimant was absent from work on August 4. He hurt his back the prior weekend helping his sister move and went to the hospital for x-rays at approximately 1:00 p.m. on August 4. He did not believe that it would take him so long to obtain the x-rays. While at the hospital he did not have access to a phone to call his employer to report that he would be absent from work. When he had an opportunity to use a phone he called the employer at 5:15 p.m. to report that he was at the hospital and would not be into work. The claimant was released from the hospital at approximately 1:30 a.m. on August 5. He called Warren around 8:00 a.m. to report that he would be absent on August 5 and was told he needed to bring his doctor's excuse into work on August 6. On August 6 the claimant spoke to Warren again and was told he did not need to come to work as he had been fired for improperly reporting his absence on August 4 because he did not call in by 4:00 p.m. Once he found out he was discharged, the claimant saw no point in providing his employer with his doctor's excuse. The claimant was not physically able to get to a phone in the hospital to timely report his absence.

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.

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. The claimant was physically unable to get to a phone to report his absence in a timely manner while he was in the hospital. Under these circumstances, physical inability to make a phone call the administrative law judge cannot consider that the claimant failed to properly report his absence. Because the final absence for which he was discharged was related to properly reported injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The August 29, 2008, 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/pjs