

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKEY GRIFFIN**  
Claimant

**APPEAL NO: 08A-UI-09573-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NCS PEARSON INC**  
Employer

**OC: 07-27-08 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 14, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 4, 2008. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 part-time material handler for NCS Pearson from January 7, 2007 to May 5, 2008. During the week beginning April 27, 2008, the claimant was absent two days because he had a sinus infection. He called in each day and provided the employer with a doctor's excuse. On May 4, 2008, the claimant was riding to work with a co-worker when the co-worker's car broke down. It was too far to walk to work so he walked home and called the employer ten minutes before the start of his shift to tell it he would not be at work that day and the reason for his absence. On May 5, 2008, the claimant reported for work but his badge would not work when he swiped it to get into the building. Security came and said they would talk to someone in the claimant's department and after 20 minutes his lead came to the door and said, "We don't need you anymore." The claimant was absent twice between January and March 2008, once due to weather and once due to a sinus infection for which he provided a doctor's excuse. He had not received any warnings about his attendance during his employment with this employer.

**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 was absent on five occasions between January 1 and May 5, 2008. One absence was due to weather conditions and three were due to properly reported illness. The final absence was due to car trouble and was properly reported. Because three of the absences were due to properly reported illness and are not considered unexcused that leaves the remaining two absences that were due to weather conditions and car trouble. While those absences may not have been excused, two unexcused absences in four months under the circumstances described by the claimant do not constitute excessive unexcused absenteeism or disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The October 14, 2008, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs