

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM SCHISSEL
Claimant

APPEAL NO. 08A-UI-00001-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM DISTRIBUTION MGMT INC
Employer

**OC: 01-21-07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 20, 2007, reference 04, 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 January 16, 2008. The claimant participated in the hearing. Mauricio Castaneda, Human Resources Manager; Deb Duehr, Receiving Manager; and Peg Heenan, Employer's Attorney, participated in the hearing on behalf of the employer. Employer's Exhibit's One and Two 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 part-time merchandise handler for Nordstrom Distribution Management from December 28, 2006 to November 2, 2007. He was moved from a full-time to a part-time employee in August 17, 2007, after a no-show and because of his attendance in general. On August 27, 2007, he left early due to illness; on August 31, 2007, he left early but neither party remembers why; on September 10, 2007, he was a no-show and called three and one-half hours after the start of his shift and said he did not realize he was scheduled that day until his girlfriend called and told him he was supposed to be at work; on September 14, 2007, the claimant called in and reported his brother was in the hospital; on September 28, 2007, the claimant left early due to an emergency with his pregnant girlfriend who had a minor traffic accident; on October 17, 2007, he left early; on October 25, 2007, the claimant called in and said he would not be in that day. He testified he reported he was ill when he called in but did not tell either Human Resources Manager Mauricio Castaneda or Receiving Manager Deb Duehr that he was absent due to illness when they notified him he that his employment was being terminated for excessive unexcused absenteeism (Employer's Exhibit Two). The claimant received a written warning about his attendance August 28, 2007 (Employer's Exhibit One) and informally warned by Ms. Duehr September 25, 2007.

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 left early due to illness on one occasion, his brother's hospitalization on another and his pregnant girlfriend's minor car accident on still another occasion. He also left early two other times but does not recall the reason. While the claimant's testimony regarding his last absence was not completely credible, the employer did not have the individual the claimant spoke to when calling in to testify; so when he states he said he would not be in because of illness, the administrative law judge must give him the benefit of the doubt. Consequently, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The December 20, 2007, reference 04, 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