

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-12864-LT
OC: 10-24-04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism
Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 10, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2004. Claimant did participate. Employer did respond to the hearing notice instructions but was not available when the hearing was called and did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time electrical specialist through September 1, 2004 when he was

discharged. Claimant was hospitalized for manic depression on August 29 for about 2½ weeks. He was physically and mentally unable to contact the employer or communicate with anyone about contacting employer for him because the medications administered caused him to be “zoned out” or “out of it.” Employer was aware through other sources that claimant was hospitalized but terminated his employment for three days of no-call/no-show absences. After the hospitalization, claimant’s physician did not release him to work until mid-October.

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 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).

Employer was admittedly aware of claimant’s hospitalization but terminated his employment after three days of no-call/no-show. Claimant was physically and mentally unable to contact employer to explain his absences because of his illness and medication side effects. See, Gimbel v. EAB, 489 N.W.2d 36 (Iowa App. 1992) where a claimant’s late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved. Claimant’s condition was also disabling but for a longer term. Because employer terminated claimant knowing he was absent related to hospitalization, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The November 10, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/b