

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAYME A BROWER**  
Claimant

**APPEAL NO: 19A-UI-06960-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD PACKAGED MEATS CORP**  
Employer

**OC: 07/14/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 23, 2019, 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 September 25, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Shannon Anthofer, Human Resources Manager and Frankie Patterson, Employer Representative, participated in the hearing on behalf of the employer.

**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 full-time pick and pack operator for Smithfield Packaged Meats from February 22, 2018 to February 22, 2019. He was discharged for exceeding the allowed number of attendance occurrences while on a last chance agreement.

The employer uses a point based attendance policy. An employee receives two points if absent a full day; he receives one-half point if he is tardy or leaves early two hours or less; he receives one point if he is tardy or leaves more than two hours from the start or end of his shift; and he receives one point if he calls in and provides a doctor's note for his absence. An employee receives a documented verbal warning when he reaches five points; a written warning when he reaches eight points; a final written warning when he reaches ten points and is terminated when he reaches 12 points.

The claimant was absent due to properly reported illness without a doctor's note April 10, 2018, and received two points; he left more than two hours early April 30, 2018, and received one point; he was absent due to properly reported illness May 11 and May 12, 2018, with a doctor's note and received one point; he was absent due to properly reported illness June 12 through June 14, 2018, with a doctor's note and received one point; he was absent due to a lack of childcare August 18, 2018, and received two points; he was absent due to a lack of childcare

September 8, 2018, and received two points; and he was absent due to properly reported illness December 21, 2018, and received two points for a total of 13 points and was recommended for termination. The claimant was next scheduled to work December 27, 2018, at which time the employer held a meeting with the claimant and his union steward and offered the claimant a last chance agreement stating he could not have any additional absences for 180 days. The claimant signed the agreement. On February 19 and February 20, 2019, the claimant was absent due to properly reported illness and received two points for each day and the employer terminated the claimant's employment February 22, 2019.

The claimant received a documented verbal warning May 3, 2018; a written warning August 18, 2018; and a final written warning September 8, 2018.

### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

While the claimant was on a last-chance agreement all but two of his absences and one incident of leaving early were attributable to properly reported illness. Even if a claimant is on a last-chance agreement and has an absence due to properly reported illness, that absence is not considered misconduct.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The August 23, 2019, reference 04, decision is affirmed. 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/scn