

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT JOHNSON**  
Claimant

**APPEAL NO. 07A-UI-00787-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON WAREHOUSE CO INC**  
Employer

**OC: 12-17-06 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 11, 2007, reference 01, 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 February 7, 2007. The claimant 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. Ann Louisan, Human Resources Manager; Jason Miller, Manager; and Chris Gilchist, Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was 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 full-time warehouseman for Jacobson Warehouse from May 22, 2006 to December 13, 2006. He was discharged for a final incident of absenteeism. The employer's policy allows five points before termination occurs and points drop off after an employee maintains perfect attendance for one month. An incident of tardiness results in one-half point. Employees are allowed five sick days before points are assigned. On June 26, 2006, the claimant called in and said he would not be in; on July 6 and 7, 2006, he called in and said he was ill and would not be in; on August 22, September 26, 27 and 28, he called in and said he would not be in because he was ill; on October 18, 19, and 23, 2006, he called in and said he would not be in because he was ill; on October 24 and 25, 2006, he called in to report he would not be in; on October 24, 25, and 26, 2006, he called in to report he was ill and would not be in; on November 13, 14, 15, and 16, 2006, he called in to report he was ill and would not be in; and on December 11, 12 and 13, 2005, he called in and reported he was ill and would not be in. On October 30, 2006, the claimant received a written warning about his attendance and on November 14, 2006, he received a written warning and suspension due to his attendance. The employer terminated his employment because of attendance December 13, 2006.

**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). While the employer testified the claimant exceeded the allowed number of attendance points and should have been discharged long before he was, the fact remains that the employer chose not to take action at that time. The administrative law judge agrees that the claimant had an excessive number of absences, however, all but 4 of the 21 days he was absent were due to properly reported illness and cannot be considered volitional or intentional. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and therefore no disqualification is imposed.

**DECISION:**

The January 11, 2007, reference 01, 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/kjw