

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LONNIE J HENRICKSEN**  
Claimant

**APPEAL NO. 08A-UI-07529-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SKYJACK EQUIPMENT INC**  
Employer

**OC: 07-13-08 R: 01  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 14, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 14, 2008. The claimant did participate along with his witnesses, Kristin Colling. The employer did participate through Pat Hedinger, Paint Supervisor and (representative) Tammy Birchard, Employer Relations.

**ISSUE:**

Was the claimant discharged for work related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a rotator on the paint line full time beginning April 12, 2007 through July 16, 2008 when he was discharged.

The claimant missed work on July 14, due to illness. He reported for work on Tuesday July 15 without a doctor's note allowing him to return to work. Mr. Hedinger, the claimant's supervisor, told him to leave work and go to his doctor's office to get a note excusing him from work. The claimant left work but forgot to swipe out on the timekeeping system. The claimant had never previously been disciplined for failing to punch out and merely forgot on this occasion. The claimant left the workplace and went to his friend Kristen Collings house to wait for his doctor's office to open at 8:30 a.m. While at Ms. Collings house the claimant began to feel like he was having a heart attack. Ms. Collings called the ambulance and the claimant was transported to Palo Alto Hospital. He was diagnosed as having suffered a panic attack, a condition the claimant has been treated for previously and was released to return to work. The claimant obtained a note and returned to the employer's workplace around noon. The claimant was not allowed to work but was sent home while the employer decided whether he would be allowed to continue his employment. The claimant was discharged on July 16 for poor attendance and for failing to swipe out when he left work on July 15.

The claimant's absence on July 14 was due to properly reported illness. The claimant was late returning to work on July 15 because he suffered a panic attack necessitating medical treatment. The claimant had never before been disciplined for failing to swipe out. The claimant was suspended from work in June due to poor attendance.

### **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 § 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). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers or if an employee is not able to work efficiently. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which he was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

The claimant had never previously been warned about failing to swipe out on the timecard system. His failure to do so on July 15 was an isolated act. Although improper, the conduct does not rise to the level of disqualification by standards of either frequency or severity.

Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The August 14, 2008, 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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