

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAKE M BURCHETTE
Claimant

ALANIZ LLC
Employer

APPEAL NO. 10A-UI-08008-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 28, 2010, reference 01, that held he was discharged for excessive unexcused absenteeism on May 7, 2010, and benefits are denied. A hearing was held on July 20, 2010. The claimant participated. Mike Owens, HR Representative, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time stock handler from November 2, 2009 to May 6, 2010. The employer attendance policy provides that an employee may be discharged for seven occurrences of absence. The employer counts a properly reported absence due to illness as one occurrence.

The claimant received a final warning on April 9, 2010 for having six occurrences that included absences for properly reported personal illness or staying home with a sick child who suffers from asthma. About one hour prior to his work shift on May 5, the claimant called to report he would be absent that day, as his wife was leaving for Iowa City due to her brother being involved in a motorcycle accident and his need to watch his infant child. The claimant was unable to secure any other day care for his son. The employer discharged the claimant for incurring seven attendance occurrences in violation of its attendance policy.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on May 6, 2010, for excessive "unexcused" absenteeism, and a current act of misconduct.

The employer attendance policy is not controlling on the issue of misconduct. The claimant offered excusable reasons for his absences due to properly reported personal illness or his son's illness that is not misconduct. The claimant offered an excusable reason for missing work on May 5. The claimant was not excessively absent for inexcusable reasons.

DECISION:

The decision of the representative dated May 28, 2010, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on May 6, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs