

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIM J UNGS**  
Claimant

**APPEAL NO. 12A-UI-08218-VST**

**THEISENS INC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/12**  
**Claimant: Appellant (2R)**

Section 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated June 28, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 31, 2012. The claimant participated personally. The claimant was represented by Jason Lehman, attorney at law. The employer failed to respond to the hearing notice and did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer as a store manager. His last day of work was June 18, 2012. He was terminated on June 18, 2012. The reason for termination was absenteeism.

The incidents that led to the claimant's termination occurred on June 14, 2012, and June 15, 2012. The claimant was absent from work for medical reasons. His prescription medication had been improperly labeled and as a result he took too much. The claimant had been under a doctor's care for anxiety and depression and there had been difficulties with finding the correct medications and dosages. The employer was aware of these medical problems.

**REASONING AND CONCLUSIONS OF LAW:**

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current

act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

There is no evidence that the claimant was discharged for a current act of misconduct. The claimant testified that he was discharged for absenteeism but the final two absences were for personal medical problems. Under Iowa law, personal illness is considered an excused absence if the employer is properly notified. The employer was aware that the claimant had longstanding health problems related to anxiety and depression. He had even asked for intermittent Family Medical Leave Act (FMLA) leave and had been denied. The employer has failed to show that the claimant was discharged for misconduct. Benefits are allowed if the claimant is otherwise eligible.

The claimant's testimony suggests that the claimant may not be able and available for work due to personal illness. This matter is remanded to the claims section for a determination on which weeks the claimant was able and available for work.

**DECISION:**

The decision of the representative dated June 28, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. This matter is remanded to the claims section for a determination on which weeks, if any, the claimant was able and available for work.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs