

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOE H CASCO
Claimant

APPEAL NO: 17A-UI-10292-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VTI ARCHITECTURAL PRODUCTS INC
Employer

OC: 09/17/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 4, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 25, 2017. The claimant participated in the hearing with Certified CTS Language Link Interpreter Tim. The employer 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. Claimant's Exhibit A 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 production worker for VTI Architectural Products from January 4, 2016 to September 15, 2017. He was discharged for exceeding the allowed number of attendance occurrences because of absences due to properly reported illness.

The employer allows employees to accumulate 21 attendance points in a rolling calendar year before termination occurs. An employee is assessed three points for each full day absence.

The claimant exceeded seven full day absences during the rolling calendar year prior to September 15, 2017. He suffers from panic attacks and all but one of his absences was because of that illness and the other absence was attributable to the flu. The claimant saw a doctor for every absence due to illness, including the last absence on September 6, 2017, and provided a doctor's excuse for each of his absences (Claimant's Exhibit A). The claimant was also absent three days due to car problems which would have resulted in nine attendance points. The employer terminated the claimant's employment for attendance September 15, 2017, following his September 6, 2017, absence due to properly reported illness.

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.

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

DECISION:

The October 4, 2017, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn