

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ARTHUR PETERSON
404 BOUNDARY ST
RED OAK IA 51566-2518**

**JOHNSON CONTROLS BATTERY GROUP
2015 FERNWOOD AVE
RED OAK IA 51566**

**Appeal Number: 06A-UI-05749-ET
OC: 02-19-06 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 30, 2006, 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 on June 20, 2006. The claimant participated in the hearing. Lana McMann, Human Resources Manager; Kevin Pollard, Plant Manager; and Tim Kammerer, Manufacturing Supervisor, participated in the hearing on behalf of the employer.

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 machine operator for Johnson Controls Battery Group

from December 19, 2003 to April 24, 2006. The employer has a no-fault point-based attendance policy and employees are terminated upon reaching six points. The claimant had four points as of April 16, 2006. On April 17, 2006, the claimant called in and asked if he could take voluntary time off. The supervisor said they were running five lines and he needed to report for work because there was no voluntary time off that night but the claimant did not call back or show up for work. On April 18, 2006, the claimant called eight minutes after the start of his shift to report he was ill and would not be in. On April 21, 2006, the claimant went to his doctor and returned to the employer with a note excusing him from work April 21 through April 23, 2006. Because the note did not cover April 17 or 18, 2006, the claimant was assessed his fifth and sixth points and his employment was terminated April 24, 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). Although the employer has a no-fault attendance policy, the administrative law judge is not bound by that policy but instead must follow Iowa law. The claimant was absent due to illness April 17 and 18, 2006. Although the final absence for which he was discharged was related to illness reported eight minutes later than the employer's policy allowed, the administrative law judge does not find that his actions rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 30, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kkf