

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ATTRELL D CONKRITE
Claimant

APPEAL NO: 19A-UI-03255-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 03/24/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2019, 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 May 9, 2019. The claimant participated in the hearing. Julie Akers, Human Resources Supervisor, participated in the hearing on behalf of the employer.

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 inbound forklift operator for Ozark Automotive Distributors from February 17, 2016 to March 5, 2019. He was discharged for exceeding the allowed number of attendance occurrences.

The employer has a no-fault occurrence based attendance policy and employees are discharged upon reaching eight occurrences. An employee receives a verbal warning after accumulating two occurrences; a written warning after accumulating four occurrences; a final written warning after accumulating six occurrences; and is discharged after accumulating eight occurrences. The verbal and written warning are in effect for six months and the final written warning is in effect for one year. Consecutive absences of two or more days for the same reason results in one occurrence.

On May 9, 2018, the claimant reported he would be late but did not go in and received one occurrence; on May 22, 2018, he reported he was still on the road from seeing his son and received one occurrence; on May 23, 2018, he reported he would not be in because he was going on a college tour with his daughter; on July 1, 2018, he reported he would be late but did not go in and received one occurrence; on July 8, 2018, he reported he would not be in because he had dust in his eye from work and had a doctor's excuse and received one occurrence; on July 29 and July 30, 2018, he reported he was ill and received one occurrence; on August 19,

2018, he reported he was going to be late but did not go in and received one occurrence; on August 27, 2018, he reported he was ill and received one occurrence; on February 10 through February 14, 2019, he reported he was absent due to a non-work related rib injury and received one occurrence because he had used all of his personal and sick leave; and on March 4, 2019, the claimant reported he was experiencing pain from his rib injury and would not be in and received one occurrence. The claimant did have a doctor's excuse for his March 4, 2019, absence.

The claimant received a verbal warning May 30, 2018, when he reached three occurrences; he received a written warning July 13, 2018, when he reached five occurrences; he received a final written warning September 4, 2018, when he reached eight occurrences; and the employer terminated his employment March 5, 2019, when he reached ten occurrences.

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 April 9, 2019, reference 01, decision is affirmed. 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