

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEROY W PILCHER**  
Claimant

**APPEAL NO: 13A-UI-03639-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALANIZ LLC**  
Employer

**OC: 03/03/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 22, 2013, reference 01, that held claimant was not discharged for misconduct on March 1, 2013, and benefits are allowed. A telephone hearing was held on April 29, 2013. The claimant participated. Mike Owens, HR Generalist, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on July 1, 1992, and last worked for the employer as a full-time mechanic on February 26, 2013. The employer issued claimant an employee handbook that contains the employer attendance and disciplinary policy. As of January 1, 2013 an employee can be terminated for accumulating eight points within a rolling calendar year. The employer considers absences as excused or unexcused.

The employer granted claimant 12 weeks of FMLA based on medical certification he needed to provide care of his emotionally ill wife. This leave expired and the employer would not allow claimant to use vacation to cover further absenteeism. The employer notes claimant worked 254 hours during his last scheduled period of 900 work hours.

On February 18, 2013 the employer issued claimant a final warning he was at eight attendance points. His recent absences were based on providing care for his wife. His absenteeism continued for the same reason but his final absence (February 28) was based on adverse road conditions due to a recent snow storm. The employer discharged claimant on March 1 for accumulating eight attendance points within a rolling year period.

**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(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 the employer has failed to establish claimant was discharged for misconduct based on excessive unexcused absenteeism in connection with employment on March 1, 2013.

The employer allowed claimant to use medically documented FMLA to miss work to provide care for his wife, but discontinued the absences as excused once it ran out. Since claimant's continuing absences are based on the reason the employer granted FMLA the termination basis is for excusable absences that are not job disqualifying misconduct. The employer discharged claimant because of how much work he missed without considering the reason for those absences based on excusable conduct.

**DECISION:**

The department decision dated March 22, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on March 1, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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