

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E LINDLY II
Claimant

APPEAL NO. 10A-UI-16659-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 11/07/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 30, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 21, 2011. Claimant participated. Employer participated through human resources generalist, Jessica Sheppard. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a maintenance worker and was separated from employment on November 9, 2010. On November 7 he properly reported his absence due to illness. Other absences were related to illness or court ordered matters related to his five step-grandchildren who were placed in his custody in 2009. The employer did not educate him about the Family Medical Leave Act (FMLA) and counted those absences against his attendance points. The employer accused him of violating the violence in the workplace policy by telling a supervisor he (the supervisor) had a "vendetta" against him (the claimant) after the notice of termination had been served and a last-chance agreement denied.

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 § 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Although the employer wants employees to report absences in a certain manner it did not reciprocate communication to educate the claimant about FMLA options available to him after the sudden placement of his step-grandchildren into his custody. Had it done so, the claimant would likely not have exceeded the employer's point system. Employer also accused claimant of an allegedly hostile act, which occurred after the notice of termination, but Webster's dictionary defines "vendetta" as "an often prolonged series of retaliatory, vengeful, or hostile acts," which claimant believed the supervisor directed at him. It was not a threat of violence against the employer. Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The November 30, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css