

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE A JIMENEZ**  
Claimant

**APPEAL NO. 08A-UI-02341-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**  
Employer

**OC: 02/03/08 R: 03  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 29, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 24, 2008. Claimant participated through interpreter Oliver Koch. Employer participated through Lauri Elliott.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker from September 12, 2006 until January 31, 2008 when he was discharged. His last day of work was January 26, 2008. On January 26 he asked supervisor Minerva for permission to take his father-in-law to the hospital in Iowa City for an emergency and she said no because he was already fired. Minerva did not participate in the hearing.

**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.

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. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Since employer had already told claimant he was fired on January 26, he was not obligated to call in or report to work thereafter. No final or current incident of unexcused absenteeism or misconduct has been established and no disqualification is imposed.

**DECISION:**

The February 29, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs