

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN D BUMANN**  
Claimant

**JOHNSON MACHINE SHOP**  
Employer

**APPEAL NO. 12A-UI-01144-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/25/11  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated January 27, 2012, reference 01, that held the claimant was not discharged for misconduct on December 21, 2011 and benefits are allowed. A hearing was held on February 23, 2012. The claimant participated. Barry Johnson, Owner, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time welder from November 10, 2011 to December 21. The employer discharged claimant on December 21 for absenteeism and failing to timely report absences from work. Prior to discharge, claimant had not been issued a warning his job was in jeopardy for absenteeism.

The claimant missed work due to his wife's incarceration for harassment and the final instance where he and his wife had to deal with his daughter's abuse issue. The claimant reported his absences to his employer, and the employer never responded that if he missed further work for these issues he would be terminated. Claimant acknowledges he was told to limit his social talk with co-workers and get back to work.

**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 that the employer failed to establish misconduct in the discharge of the claimant on December 21, 2011, for excessive "unexcused" absenteeism.

The employer sets the required standard of behavior for attendance by issuing a meaningful warning to let an employee know that absenteeism has got the point that further missing work will cause employment termination. The employer never issued such a warning to claimant who experienced a wave of absences due to family/domestic issues. While the employer might well have been justified to terminate claimant for excessive absences within a brief period of employment, misconduct must be established to deny unemployment benefits. The employer failure to establish job disqualifying misconduct in this matter is due to a lack of a formal warning.

**DECISION:**

The decision of the representative dated January 27, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on December 21, 2011. 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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