

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROB L STILES
Claimant

APPEAL NO. 09A-UI-09203-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KAISER CONTRACT
CLEANING SPECIALISTS INC**
Employer

**Original Claim: 05/17/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rob Stiles filed an appeal from a representative's decision dated June 18, 2009, reference 01, which denied benefits based on his separation from Kaiser Contract Cleaning Specialists, Inc. (Kaiser). After due notice was issued, a hearing was held on July 14, 2009 in Des Moines, Iowa. Mr. Stiles participated personally and offered additional testimony from Diane Stiles. The employer participated by Juan Martinez, Site Manager.

ISSUE:

At issue in this matter is whether Mr. Stiles was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stiles began working for Kaiser on November 14, 2008 as a full-time laborer. His last day of work was April 22, 2009. He was off work thereafter because of a pulled muscle in his shoulder. He was released by his doctor on April 24 to perform light-duty work. Since Mr. Stiles' injury was not believed to be work-related, the employer did not provide him with light-duty work. He was not eligible to take a medical leave of absence.

When he had not been released to full duty as of May 30, the employer discharged Mr. Stiles because of his attendance. He had received six written warnings about his attendance. He had been absent without calling in on December 31, 2008 and January 18, 2009. The absence of December 31 was due to frozen pipes in his home. The absence of January 18 was due to the illness of a family member and he provided a doctor's excuse to support the absence.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. There must be a current act of unexcused absenteeism to support a disqualification from job insurance benefits. 871 IAC 24.32(8).

The last unexcused absence identified in the record was that of January 18, 2009. However, Mr. Stiles was not discharged until May 30, 2009. The absence of January 18 did not constitute a current act in relation to the May discharge. The decision to discharge was prompted by the absences beginning after April 22. The absences were for medical reasons, as Mr. Stiles did not have a full release that would allow him to return to Kaiser. Although he was prepared to return to work, he was not allowed to do so. Because the absences were for medical reasons, they are excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

It was within the employer's prerogative to discharge Mr. Stiles as a result of his attendance. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, it is concluded that deliberate and intentional misconduct has not been established. As such, benefits are allowed.

DECISION:

The representative's decision dated June 18, 2009, reference 01, is hereby reversed. Mr. Stiles was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw