

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L GRAM
Claimant

APPEAL NO. 06A-UI-11531-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 10/08/06 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Millard Refrigerated Services, Inc. (Millard) filed an appeal from a representative's decision dated November 21, 2006, reference 03, which held that no disqualification would be imposed regarding Robert Gram's separation from employment. After due notice was issued, a hearing was held by telephone on December 18, 2006. The employer participated by Todd Rogers, General Manager. Mr. Gram responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. He contacted the administrative law judge at 9:21 a.m., after the hearing record was closed at 9:13 a.m. He missed the hearing because he overslept. Because he did not have good cause for not participating at the scheduled time, the administrative law judge declined to reopen the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gram began working for Millard on December 5, 2005. He was last employed full-time as lead worker on the conveyor line. In mid-September of 2006, he notified the employer that he needed to undergo surgery to repair a hernia. His condition was not work-related. Mr. Gram and his doctor anticipated that he would need from four to six weeks to recuperate from the surgery. Because of the short duration of his employment, he was not eligible for any type of leave of absence.

It was not the employer's intent to keep Mr. Gram's job open until he could return. In a letter dated October 9, he was notified that he no longer had employment with Millard. He may reapply for work after he has a full release from his doctor. Mr. Gram's need to be absent for medical reasons was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Gram was discharged. Although he left the employment on the advice of his doctor to undergo surgery, he was discharged before he recovered from his condition and had an opportunity to re-offer his services. For the above reasons, the administrative law judge concludes that the provisions of Iowa Code section 96.5(1)d are not applicable to the facts of this case.

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). Mr. Gram was discharged because of absences associated with his surgery. The absences were for reasonable cause and the employer was properly notified of the need to be absent. Therefore, all of the absences are excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

While the employer may have had good cause to discharge Mr. Gram, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated November 21, 2006, reference 03, is hereby affirmed. Mr. Gram was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css