

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA T NORVELL**  
Claimant

**APPEAL NO. 08A-UI-09927-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EAST WEST STAFFING**  
Employer

**OC: 08/03/08 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

East West Staffing filed an appeal from a representative's decision dated October 24, 2008, reference 02, which held that no disqualification would be imposed regarding Joshua Norvell's separation from employment. After due notice was issued, a hearing was held by telephone on November 12, 2008. The employer participated by Ann Mellinger, On-Site Coordinator; Michelle Mutchler, On-site Manager; and Eric Bartholomew, Personnel Coordinator. Mr. Norvell did not respond to the notice of hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Norvell was last employed by East West Staffing from February 26 until June 6, 2008. He was assigned to work full time for The Scott Company. He was discharged because he violated the terms of a "last chance" agreement.

Mr. Norvell was absent due to illness on March 24 and March 30. As a result, he received a written warning on April 1. He was absent the full shift on April 16 and a portion of the shift on April 21 because his daughter was ill. He received an additional written warning on April 18. He was absent for unknown reasons on March 16, April 10, April 27, and May 7. As a result of his accumulated absences, Mr. Norvell was placed on a "last chance" agreement on May 9. The decision to discharge was based on his absence of June 5. He called to report that he would be absent due to his daughter's illness. He came to the work place at the end of the shift on the morning of June 6 and presented the employer with documentation from the hospital showing that his daughter had received treatment the evening prior. He was notified of his discharge on June 6. Attendance was the sole reason for the discharge.

**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 receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Moreover, there must be a current act of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8).

In the case at hand, the final absence that prompted Mr. Norvell's discharge was that of June 5. The absence was for reasonable cause, his daughter's illness, and was properly reported. He also presented documentation to establish that he took his daughter for medical care during the shift he missed. For the above reasons, the absence of June 5 is excused. The next most prior absence was on May 7 when Mr. Norvell missed work for unknown reasons. Even if the administrative law judge were to conclude that the absence of May 7 was unexcused, it still would not represent a current act in relation to the June 6 discharge. As such, it could not form the basis of a disqualification from benefits.

Inasmuch as Mr. Norvell's discharge was not triggered by a current act of misconduct, no disqualification may be imposed. While the employer may have had good cause to discharge, 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 cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated October 24, 2008, reference 02, is hereby affirmed. Mr. Norvell was discharged, but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw