

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNIE BIBBY
Claimant

APPEAL NO. 07A-UI-06521-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 05-20-07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 19, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 18, 2007. The claimant participated in the hearing. Melissa Skinner, Assistant Human Resource Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance worker for Cargill Meat Solutions from December 28, 2005 to April 23, 2007. He was off work from February 18, 2007 through April 23, 2007, due to severe depression. He called in each day he was off to report his absence. On March 6, 2007, the employer sent the claimant FMLA paperwork and stated he had 15 days to return that paperwork (Employer's Exhibit One). On April 9, 2007, the employer sent the claimant a letter asking him to notify it of his status by April 23, 2007, or it would consider him to have voluntarily left his employment (Employer's Exhibit One). The claimant did not respond to either letter because he did not understand FMLA but did have a doctor's note for his absence and intended to give that to the employer when he was released to return to work. The employer's deadline passed before the claimant was released to return to work May 11, 2007, and consequently the claimant did not return to the employer and offer his services when he was released.

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 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was off work due to severe depression. He called in everyday and reported his absences and had a doctor's excuse covering the time he was off. While he should have responded to the employer's inquiries, the nature of his illness, and the fact he did not understand FMLA, prevented him from communicating with the employer beyond calling in to report he was ill. Therefore, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

DECISION:

The June 19, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw