

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN DREESMAN**  
Claimant

**APPEAL NO. 06A-UI-11361-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KEIM T S INC**  
Employer

**OC: 10-22-06 R: 01  
Claimant: Appellant (2)**

Section 96 5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 16, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 12, 2006. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 truck washer/mechanic for Keim T S Inc. from April 13, 2006 to October 23, 2006. He was discharged from employment due to a final incident of absenteeism that occurred on October 23, 2006. The claimant was absent approximately three to four times during the length of his employment because one of his three children was ill and he had to take them to the doctor. He provided doctor's excuses for each absence. The claimant's third child was born June 19, 2006, and he was absent from work for her birth and provided a doctor's note for that absence. His daughter became ill with pneumonia approximately one week after she was born and the claimant was absent while she was in the hospital. He provided a doctor's note for that absence but received a verbal warning about his attendance. On October 23, 2006, the claimant called the employer and said he would not be in until that afternoon because his son was ill and he had to take him to the doctor. The child's mother was not available and the daycare center would not accept him because he was sick. The employer told the claimant to be at work by 1:00 p.m. or his employment would be terminated but the child's doctor appointment was not until 1:15 p.m. and the claimant was discharged for excessive absenteeism.

**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). While the claimant was absent several times because of the illnesses of his children or himself, there is no evidence that these absences were not related to properly reported illness. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. Because the final absence was related to a properly reported illness, no final or current incident of unexcused absenteeism has been established. Consequently, the employer has not met its burden of proving disqualifying job misconduct. Benefits are allowed.

**DECISION:**

The November 16, 2006, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css