

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE L STANLEY**  
Claimant

**APPEAL NO. 07A-UI-08580-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTRONIC DATA SYSTEMS CORP**  
Employer

**OC: 08/05/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated August 28, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 24, 2007. Mr. Stanley participated personally. The employer participated by Beverly Lamb, Hearing Representative, and witness, Jessica McEnen.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 23, 2006 until on or about June 18, 2007 when he was discharged from employment. Mr. Stanley was employed as a full-time call center representative and was paid by the hour. His immediate supervisor was William Cody.

On May 21, 2007, the claimant was placed on a performance improvement plan for excessive absenteeism. Although the claimant was subject to being discharged on the next attendance infraction, the claimant was not discharged when he was absent May 31, 2007. Mr. Stanley was on approved vacation from June 1 to June 8, 2007 but did not report back for scheduled work on June 9, 2007 as expected. Although the claimant did not report the remainder of that week, he was not discharged from employment. On June 14, 2007, Mr. Stanley spoke with management regarding job dissatisfaction and indicated that he might possibly "quit." Subsequently the claimant again called in absent on one occasion and failed to report for scheduled work on a second occasion without providing notification to the employer. The employer, however, did not discharge Mr. Stanley. On or about June 18, Mr. Stanley called prior to the beginning of his work shift to inform the company that he might not be able to report for work due to the illness or injury of his child. Although the claimant had properly notified the

employer of his impending absence due to illness of his child, the employer made a management decision to terminate Mr. Stanley from his employment at that time.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes based upon the evidence in the record that although the employer had good cause on numerous occasions to terminate Mr. Stanley for excessive absenteeism and/or failing to follow the company's notification policies, the company did not do so. During this time the claimant was considering leaving his employment due to job dissatisfaction and because of conflict with his supervisor. It appears that the employer was attempting to mediate the issues and made a conscience decision to allow the claimant to continue to remain on company employment rolls even though he had been repeatedly absent and had not provided notification as required. The evidence is uncontroverted that Mr. Stanley remained a company employee until his final attendance infraction which occurred on or about Monday, June 18, 2007 when the claimant was not able to report for scheduled work due to the illness or injury of his child. The evidence is undisputed that Mr. Stanley provided proper notification that day and the reason for his absence was compelling. Without any further attendance infractions occurring, the company, at that juncture, made a decision to terminate Mr. Stanley from his employment and informed him of his termination via telephone.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct if both excessive and unexcused. The Court held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. In this case the evidence establishes that although Mr. Stanley's violation of the company's attendance and notification policy in the past had been repetitive, the claimant did call in on his final day specifically indicating his absence was due to the illness of his child. The absence was thus excused and no further act of intentional disqualifying misconduct took place until the claimant's discharge.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge must conclude that the claimant's final incident of absence was due to illness properly reported. The claimant's separation from employment was non disqualifying.

**DECISION:**

The representative's decision dated August 28, 2007, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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