

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD MORFORD
Claimant

APPEAL NO: 12A-UI-03723-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 03-04-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2012, reference 01, 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 April 25, 2012. The claimant participated in the hearing with Union Representative Brian Uhling. Kirstie Horton, Human Resources Associate, participated in the hearing on behalf of the employer.

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 production worker for Cargill Meat Solutions from July 5, 2006 to March 8, 2012. The employer uses a no-fault, point-based attendance policy and employees are discharged upon reaching 14 points. The employer assesses one point to employees for a properly reported absence; two points for a no-call no-show; one-half point for an incident of tardiness of less than two hours; and one-half point for leaving early less than two hours from the end of their shift. The claimant was absent April 25, June 20, July 12, July 22, August 1 and 2 with a doctor's note; October 31, November 5, 22, December 15, 2011, January 6 and 25, 26 and 27, 2012, with a doctor's excuse for the last three days, and received one point for each absence. He was tardy October 7 and left early December 28, 2011 and January 17, 2012, and received one-half point for each of those incidents. The claimant was ill due to properly reported illness and had a doctor's note excusing his absence from February 22 through February 28, 2012. The employer assesses one point to an employee for an absence of one through three days consecutive with a doctor's note but any consecutive days missed after that are assessed points for each day absent. Consequently, the claimant received a total of four points for that absence. His wife was scheduled to have surgery February 29, 2012, and the claimant planned to use his remaining points for days off to take care of her, because she was bedridden, and to care for their children through March 2, 2012. The claimant asked the employer about a leave of absence and was told he could not have one to care for his children. He was not told to apply for Family and Medical Leave (FML) before his scheduled absence or

that he would likely have qualified because he was caring for his spouse following her surgery. The claimant returned to work March 3, 2012, and spoke with Human Resources Assistant Sarah James about FML and stated he was concerned about his points. She asked him how long he had worked for the employer and when he stated nearly six years she told him not to worry about his points and sent him back to work. The employer terminated the claimant's employment March 8, 2012. The claimant received a verbal warning in writing July 12, 2011, upon accumulating seven points; a first written warning December 28, 2011, upon accumulating 12 points; a second written warning February 24, 2012, upon accumulating 13.5 points; and was terminated March 8, 2012, at which time he had 19.5 points. The claimant suffered from migraine headaches and most of his absences prior to February 22, 2012, were due to migraines.

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 did exceed the allowed number of attendance points, the claimant's last absence was due to his wife's surgery, which should have made him eligible for FML, as he needed to care for her, as well as their children, for three days because his wife was bedridden. The claimant planned to use his remaining points for her surgery but became ill February 22, 2012, and had to use his points for his own illness and the employer refused to grant him a leave of absence or tell him he was probably eligible for FML. The claimant's remaining absences were the result of properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The April 4, 2012, reference 01, 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/css