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

DAVID L SAMUELSON
Claimant

APPEAL NO. 13A-UI-00549-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE
Employer

**OC: 12/09/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated January 8, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on December 12, 2012, and benefits are denied. A hearing was held on February 14, 2013. The claimant participated. Koann Eaton, Workforce Planning Coordinator, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time production employee from September 10, 2012 to December 12. The employer does not have a written attendance policy.

The employer discharged claimant on December 12 for excessive absenteeism based on 11 absences during a 90-day (probationary) period of employment. The claimant's supervisor (module leader) was present at discharge. Although claimant did not receive any written warning he was counseled by his supervisor about his absences.

Claimant did provide some doctor (or chiropractor) excuses for absences. He was absent from work for the period from December 3 thru December 7 and on December 6, 7 he was a no-call/no-show to work. The employer relied upon the number of absences and the recent no-call/no-show absences for discharge.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

>   (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The administrative law judge concludes the employer established misconduct in the discharge of the claimant on December 12, 2012, for excessive "unexcused" absenteeism.

The employer witness relied upon time records to establish claimant was absent the entire week of December 3 thru December 7 that refuted claimant's statement he came in and clocked-out on December 6. The employer had information from claimant's supervisor who was present at discharge claimant was a no-call/no-show for December 6 and 7 and claimant did not dispute this at his termination. Two incidents of no-call/no-show is sufficient to establish job disqualifying misconduct especially during a brief period of employment.

DECISION:

The decision of the representative dated January 8, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on December 12, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

_____
Decision Dated and Mailed

rls/pjs