

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARREL HALL**  
Claimant

**APPEAL NO: 09A-UI-15331-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BAIRD SUPPORTING SYSTEMS INC**  
Employer

**OC: 08-30-09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 7, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2009. The claimant participated in the hearing. Benjamin Abbas, Owner, 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 plant laborer for Baird Supporting Systems from October 2, 2007 to September 5, 2009. The employer's policy requires employees to call in at least one hour before the start of their shift when they are going to be tardy or absent. On September 1, 2009, the claimant got up late and then remembered he had a doctor appointment at 9:30 a.m. He did not go to work after his appointment because he did not "think (the employer) would mind him missing the other part of the day." On September 2, 2009, another employee stopped by to give him a ride to work and the claimant came out on the porch and said he did not feel well and he was not going in to work. He did not notify the employer in time for the employer to make other arrangements. On September 3, 2009, the claimant called the employer and said he was at the hospital and would not be in to work. On September 4, 2009, the claimant returned to work and the employer notified him his employment was terminated for unexcused absences September 1 and September 2, 2009.

**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). On September 1, 2009, the claimant woke up late, went to a doctor appointment at 9:30 a.m., did not return to work the remainder of his shift, which ended at 3:30 p.m., and did not notify the employer he would be gone at least an hour prior to his shift. The employer did not have an opportunity to make other arrangements to cover the claimant's shift. On September 2, 2009, the claimant greeted the co-worker that was picking him up to take him to work and said he did not feel well and he was not going to work. He did not call the employer one hour before the start of his shift but instead relied on his co-worker to tell the employer and he did not tell the employer until between 6:45 a.m. and 7:00 a.m., which was not timely, and did not give the employer time to make other arrangements to cover the claimant's position. On September 3, 2009, he did call the employer at least one hour before the start of his shift and said he would not be in because he was ill. While the claimant did not provide a doctor's excuse for his absences September 2 and 3, 2009, and behaved irresponsibly at best in not calling the employer September 1 and 2, 2009, deciding the employer would not mind if he did not go in after a 9:30 a.m. doctor appointment September 1, 2009, and expecting a co-worker to tell the employer he would not be in September 2, 2009, Iowa law requires three consecutive no-call no-shows for an employee to be considered a voluntary quit. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Consequently, benefits must be allowed.

**DECISION:**

The October 7, 2009, reference 01, decision is affirmed. 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/pjs