

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK STEPHENS
Claimant

APPEAL NO: 15A-UI-13159-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FOODS INC
Employer

OC: 11/01/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 24, 2015, reference 03, 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 16, 2015. The claimant participated in the hearing with his witness/grandfather Richard Stroman. John Carreras, Human Resources Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A through D were admitted into evidence.

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 Tyson Foods from March 31, 2015 to November 9, 2015. He was discharged for exceeding the allowed number of attendance points.

On October 19, 2015, the claimant was sent home early due to an excused, non-work-related illness. On October 20, 2015, the claimant called the employer and stated he was in the hospital. The employer instructed him to have a medical professional send it a fax stating he was in the hospital. The claimant returned to work October 20, 2015, but was too ill to work and was again sent home. He returned to the hospital that evening and was admitted. He called in to report his absences October 21 through October 31, 2015. He was in the hospital from October 20 through October 23, 2015, October 26, and October 29 through October 31, 2015. On Monday, November 2, 2015, the claimant took his medical notes to the employer and the employer told him to get additional notes covering October 20 through October 23, 2015. The claimant went back to the hospital November 2, 2015, to get further notes covering his absence October 20 through October 23, 2015. He returned to the employer November 3, 2015, and spoke to human resources. He was again told he needed more specific notes. Because the claimant had provided the notes for his absences and hospital stays already he chose to file for

unemployment effective November 1, 2015, because the employer would not allow him to return to work.

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 § 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.

Iowa Admin. Code r. 871-24.32(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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant's absences were clearly due to illness and properly reported. The employer questioned his lack of documentation concerning his hospital stay October 20 through October 23, 2015. However, the claimant's testimony that he was in the hospital and called in each of those days to report his absence was credible and those absences should not be considered no-call no-show absences. While the employer repeatedly sent the claimant to retrieve different doctor's notes than the ones he provided, the claimant did not know specifically what the employer wanted. He made several efforts to comply with the employer's requests before finally giving up and filing for unemployment benefits because the employer would not allow him to return to work

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The November 24, 2015, reference 03, decision is reversed. 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