

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY L LAWR**  
Claimant

**APPEAL NO: 13A-UI-13351-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A M COHRON & SON INC**  
Employer

**OC: 11/10/13  
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 5, 2013, reference 01, that held he voluntarily quit without good cause attributable to the employer on October 31, 2013, and benefits are denied. A telephone hearing was held on December 23, 2013. The claimant participated. Gerrie Stout, Payroll, and Nick Burg, Supervisor, participated for the employer.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on June 18, 2013, and last worked for the employer as full-time labor on October 31. Claimant received an employee handbook with the employer attendance policy. He knew he could be terminated for no-call no-show to work.

Supervisor Burg issued claimant a written warning on September 25, 2013 for two no-call no-show's to work for September 23 and 24. Claimant received the warning.

Claimant was a no-call no-show to work on November 1. He left a phone message to his supervisor he would not be in on November 4. He came into the office on November 4 with a doctor statement he was unable to drive. There was no doctor excuse from work for any period. He was having a low blood sugar issue. The employer terminated claimant for a third no-call no-show to work.

**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(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 employer established claimant was discharged for misconduct due to excessive unexcused absenteeism effective November 1, 2013. Since claimant came into work on November 4 with a doctor statement, he demonstrated intent to continue employment. His employment separation is discharge, not a voluntary quit.

The employer had issued claimant a recent written warning for two no-call no-show incidents on September 25, and job disqualifying misconduct occurred when claimant was a no-call no-show on November 1. The doctor note does not excuse claimant from work for November 1 or any other day; it is limited to no driving that does not mean he can't work.

**DECISION:**

The department decision dated December 5, 2013, reference 01, is modified with no effect. The claimant was discharged for misconduct on November 1, 2013. 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

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Decision Dated and Mailed

rls/pjs