

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY L WILSON**  
Claimant

**APPEAL NO. 11A-UI-09088-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VANTEC INC**  
Employer

**OC: 06/05/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 8, 2011 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 3, 2011. Claimant participated with former coworker and girlfriend Janet Danielson. Employer participated through senior human resources assistant Alicia Perez and third shift supervisor John Feldes. Employer's Exhibit One was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a third shift machine operator from February 2011 and was separated from employment on June 10, 2011. On June 9, 2011 claimant did not report for work because he had a flat tire. He knew he was low on attendance points. He also missed work on: February 25 because of an emergency room visit for an abscessed tooth; March 14 for oral surgery; March 1 sick, March 21 he was present but forgot to punch in; April 5 he attended his uncle's memorial service for family not at the funeral; April 19 and 29 sick, May 2 present on time but punched in late, May 29 ill. All illness was related to the tooth abscess and related complications. He did not miss work for his uncle's funeral.

**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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because all but one absence was related to properly reported illness, two occurrences were related to clocking in after he was present on time, and the April 5, 2011 absence was related to his uncle's memorial service in lieu of attending the funeral, the final absence, which is considered unexcused, did not meet the excessiveness standard and no disqualification is imposed.

**DECISION:**

The July 8, 2011 (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs