

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTAN HOLTRY**  
Claimant

**APPEAL NO: 13A-UI-10645-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOOD LLC**  
Employer

**OC: 08/18/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 10, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 11, 2013. The claimant participated in the hearing. Aaron Peterson, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two 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 Osceola Foods from December 12, 2011 to July 10, 2013. He was discharged because he exceeded the allowed number of attendance occurrences.

The employer's attendance policy is a point based, no-fault system. Employees receive one point for a full day absence, or if they leave or arrive more than four hours early, and one-half point if they are less than four hours late or leave less than four hours early. Points drop off one year after occurrence or two consecutive months of perfect attendance. The claimant received a copy of the attendance policy and signed off on the policy (Employer's Exhibit One).

The claimant was tardy January 15, 2013, and incurred one-half point; he was absent July 10, 2012, because he injured his arm while off work and incurred one point; he was tardy February 18, 2013, because he was detained by a question by maintenance and did not clock in on time and incurred one-half point; he was absent April 29, 2013, due to his daughter's illness and incurred one point; he was absent June 17, 2013, because he broke his foot while horseback riding and incurred one point; he was absent June 20, 2013, for unknown reasons and incurred one point; and he went to work for a short period of time June 24, 2013, but experienced an anxiety attack and went to the hospital, and incurred one point even though he

had a doctor's note excusing his absence. The claimant broke his foot again while horseback riding and was absent July 5, 2013, incurring his ninth and final point. His physician excused him for three days but he returned after one day, and worked until the employer terminated his employment July 10, 2013.

The employer issued either verbal warnings in writing, written warnings and, on one occasion following his absence June 24, 2013, a second written warning to the claimant following each of his stated absences.

### **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). 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.

Although the claimant did exceed the allowed number of attendance points, all but one of his points was accumulated due to illness, and the final absence was due to injury and accompanied by a doctor's note excusing the claimant from work. Because the final absence was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

**DECISION:**

The September 10, 2013, 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/css