

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL E GORDON
Claimant

APPEAL NO. 06A-UI-10454-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA AG LLC
Employer

**OC: 10-01-06 R: 02
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 19, 2006, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2006. The claimant did participate. The employer did participate through Marten Salinas, Supervisor.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a machine operator full-time beginning July 3, 2006 through September 29, 2006 when he was discharged. The claimant was absent from work on September 30 because he was hospitalized for high blood pressure. The claimant had been warned about his attendance after he was a no-call/no-show to work on September 23 and 24. The claimant then worked on September 25, 26, 28 and 29. He went to the hospital after completing his shift on the evening of September 29.

The claimant's wife was also an employee of this employer and she told the supervisor, Ramerio Nuniez that the claimant would not be at work since he was hospitalized. The claimant's wife also telephone another supervisor, Paco, and left him a voicemail message indicating that he claimant would not be into work because he was ill and hospitalized. The claimant's wife attempted to give the same supervisor a note from the claimant's physician on October 1, but he would not accept it and told her that her husband was discharged for missing work on September 30 and October 1.

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.

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). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

The administrative law judge is persuaded that the claimant's wife, who reported for work, did attempt to report the claimant's absence for him as he was hospitalized and unable to do so himself. The claimant did properly report his absences due to illness.

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. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. 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 the final absence for which he was discharged was related to a properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 19, 2006, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs