

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN A MASON

Claimant

APPEAL NO. 09A-UI-08836-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC

Employer

**Original Claim: 05/10/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated June 11, 2009, reference 01, that held the claimant was discharged for no misconduct on April 29, 2009, and that allowed benefits. A hearing was held on July 7, 2009. The claimant participated. Jeremy Huffman, General Manager at Simpson College, and Luana Curtis, Custodial Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant worked as a temporary, without-employee-benefits employee, from September 9, 2008 to April 24, 2009, when he became a full-time employee with benefits. As a full-time employee, the claimant became subject to the Union bargaining agreement. The claimant was not provided a copy of the agreement.

The claimant called and left a message on the employer's custodial phone that he would miss work due to illness on April 30, 2009. The claimant called and left a similar message on May 3 with a statement that he was going to see a doctor. The claimant went to a doctor, but the office would not treat him without medical insurance or pre-visit payment, and the claimant could not afford the visit. The claimant called in on the custodial phone to report absences due to illness from May 4 through May 7. The claimant called in on May 10 to report his grandfather passed away the day before, and he requested time off from work. Manager Curtis called the claimant on May 11 to advise that he could have three days off for bereavement leave, but he would be expected to report to work on May 14.

Curtis called the claimant on May 14 to request that he bring in a doctor's statement to cover the period of his absences from work due to illness. When the claimant explained that he had not seen the doctor, after a review, the employer terminated him for job abandonment for three days of absence without a doctor's excuse.

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 that the employer failed to establish misconduct in the discharge of the claimant on May 14, 2009, because the claimant's properly-reported absences due to illness do not constitute excessive "unexcused" absenteeism.

The employer terminated the claimant for not having a doctor's excuse or statement to cover the period of his absences. Although the employer disputed that the claimant did not properly report the absences, it was willing to have him return to work on May 14, so long as he had a doctor's excuse. This conclusion is supported by the willingness of the employer to grant the claimant three days of bereavement up to May 14 without any consequence for how he reported the absences. Clearly, the claimant did not abandon his job, but was terminated for absences due to illness that he reported to the employer. In order for excessive absenteeism to be considered misconduct, it must be for inexcusable reasons, and properly-reported illness is excusable.

DECISION:

The representative's decision dated June 11, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on May 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw