

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEREMY HAACK
Claimant

APPEAL NO: 19A-UI-06553-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

OC: 07/21/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 9, 2019, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 12, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Kathy Anderson, Human Resources Manager and Tanis Burrell, Employer Representative, participated in the hearing on behalf of the employer.

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 dealer dice employee for Diamond Jo Worth from October 2, 2017 to July 23, 2019. He was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault, point-based attendance policy. An employee receives a verbal warning when he accumulates six points; a written warning when he accumulates eight points; a final written warning when he accumulates ten points; and is terminated upon accumulating 12 points over a rolling 12-month period.

On July 27, 2018, the claimant received one point for a properly reported illness; on September 21, 2018, he received one point for a properly reported illness; on September 22, 2018, he received one-half point for a continuous properly reported illness; on November 16, 2018, he received one point for a properly reported illness; on November 19, 2018, one point dropped off; on January 4, 2019, he received one point for a properly reported illness; on January 12, 2019, one and one-half points dropped off; on January 18, 2019, the claimant received one and one-half points because he was absent due to weather and did not call at least two hours prior to his shift; on February 2, 2019, one and one-half points dropped off; on February 3, 2019, one-half point dropped off; on March 9, 2019, he received one point for a

properly reported illness; on April 8, 2019, one point dropped off; on April 13, 2019, he received one point for a properly reported illness; on April 26 and April 27, 2019, one point dropped off each day; on May 27, 2019, the claimant was absent due to illness on a high volume business day, did not call at least two hours prior to his shift, and received three points; and on July 19, 2019, he was absent due to a properly reported absence and received one point for a total of 12 points.

The claimant received a final written warning January 8, 2019, January 22, 2019; March 15, 2019; April 15, 2019; and May 27, 2019. The employer terminated the claimant's employment July 23, 2019.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The August 9, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn