

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 06A-UI-07935-ET
OC: 07-02-06 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 25, 2006, 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 August 23, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing. Mitch Miller, Human Resources Manager, participated in the hearing on behalf of the employer.

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 warehouse operator for Minnesota

Mining & Manufacturing from May 9, 2005 to July 5, 2006. The employer's attendance policy states that employees are allowed six points in a rolling twelve-month period before termination occurs. They receive a verbal warning at three points; a written warning at four points; a written warning and one-day suspension at five points and are terminated at six points. On November 11, 2005, the claimant called in sick and received one point; on November 15 and 16, 2005, he was absent due to illness and received one and one-half points; on February 8 and 9, 2006, he was absent due to illness and received one and one-half points; on June 12 and 13, 2006, he was absent due to illness and received one and one-half points; and on June 15, 2006, he was a no-call/no-show and received two points giving him a total of seven and one-half points and his employment was terminated July 5, 2006.

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). With the exception of the last absence, all of the claimant's absences were due to properly reported illness. While he did exceed the allowed number of attendance points, and his last absence was not properly reported, the Iowa Supreme Court has stated that a single unexcused absence does not constitute excessive unexcused absenteeism. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Consequently, the administrative law judge must conclude that seven of the claimant's last eight absences were due to properly reported illness and one unexcused absence does not constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 25, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/cs