IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KEVIN D BRIDGES Claimant **JOHN MORRELL & CO** Employer	**APPEAL 17A-UI-09814-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/27/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 21, 2017 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 10, 2017. Appeal 17AUI 09815-DB-T was consolidated and heard at the same time as this matter. The claimant, Kevin D. Bridges, participated personally. The employer, John Morrell & Co., participated through witness Jacque Huesman. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

John Morrell & Co. is a division under parent company Smithfield Foods. Armour-Eckrich Meats LLC is a subsidiary under the division of John Morrell & Co. Claimant was continuously employed from May 17, 2016 through August 24, 2017, even though his wage history lists separate employer accounts for John Morrell & Co. and Armour-Eckrich Meats LLC. No separation in employment occurred until August 24, 2017.

Claimant was employed full-time as a general laborer on the poultry line. The employer has a written attendance policy stating that if an employee receives seven occurrences due to absenteeism, they are subject to discharge from employment. The policy further states that if an employee cannot come to work they must notify the employer within two hours after the employee's scheduled shift start time. Claimant received a copy of this written policy on July 29, 2016 and the policy has not changed since that date.

Claimant was absent on September 10, 2016 due to personal business. He did report his absence in accordance with the employer's reporting policy. Claimant was absent on July 16, 2017 because he did not have a babysitter for his infant son. He did report his absence in

accordance with the employer's reporting policy. Claimant was tardy to work on July 19, 2017 due to transportation issues. Claimant was absent from work on August 22, 2017 when he left his scheduled shift early. He did report to his supervisor that he was leaving early. He left early to care for his infant son, who was ill. Claimant was absent from work on August 23, 2017 in order to care for his infant son, who was ill. Claimant reported his absence to his employer and stated that he was absent on this date due to personal business. Claimant scheduled an appointment for his son to visit with a physician on August 25, 2017. Claimant's son was not hospitalized during this illness.

Claimant resides with the mother of his son and two minor children. The mother of claimant's son is a caretaker to claimant's son. She was ill with the flu on August 22, 2017 and August 23, 2017. The mother of claimant's son did not seek medical attention for her illness.

On July 24, 2017 claimant received a written warning for attendance violations. The warning stated that continued absences would lead to claimant's discharge from employment. On August 23, 2017, Ms. Huesman attempted to reach claimant regarding the reason why he was absent that date. Claimant did not contact Ms. Huesman until after he was discharged on August 24, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment for job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

> errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Excessive absences are not considered misconduct unless unexcused. *Id*. at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Id.* at 558.

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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)…accurately states the law." The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper,* 321 N.W.2d at 10 (Iowa 1982). The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins*, 350 N.W.2d at 191 or because it was not "properly reported." *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness and an incident of tardiness is a limited absence. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id*. at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id*. at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Id*.

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. *See Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

The claimant had received a final written warning for his previous absences. The claimant knew that he needed to come to work when scheduled. He understood the attendance policy and knew that seven absence occurrences would lead to discharge. The claimant had five unexcused absences in a less than a twelve-month period. The unexcused absences in this case include the dates of September 10, 2016; July 16, 2017; July 19, 2017; August 22, 2017; and August 23, 2017. None of these absences were due to the claimant's personal illness or for other good cause. Neither the mother or the claimant's infant son sought medical attention for their illnesses on the dates that claimant was absent from work allegedly due to these illnesses. Absences due to lack of childcare are issues of personal responsibility. Claimant's son's illness was clearly not an emergency situation that required claimant to be absent from work.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final incident on August 23, 2017 was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, amounts to job-related misconduct. Benefits are denied.

DECISION:

The September 21, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs