

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MATTHEW G SCHLACHTER**  
Claimant

**ABCM CORPORATION**  
Employer

**APPEAL 14A-UI-12411-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/09/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 25, 2014 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2015. Claimant participated along with his witness Stephanie Welch, Office Manager at the Rolling Green Village location, and was represented by Jim Hamilton, Paralegal. Employer participated through Steve Dieke, Executive Assistant to the CEO, and Kristine Tomash, Former Administrator of the Rolling Green Village location. Employer's Exhibits A through I were entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct or did he voluntarily quit his employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance general construction worker beginning on February 28, 2013 through November 12, 2014 when he was discharged.

The claimant's job required that he work at the different locations owned by the employer. Employer's Exhibit F detailed how maintenance employees were to check in when they arrived at a location to work. Employer's Exhibit F is not the policy claimant was to follow when reporting his absences. On November 7, 10, and 11 the claimant was living with Stephanie Welch, who is the office manager at the Rolling Green location. The claimant asked her to tell Ms. Tomash, the administrator, that he would not be into work either of those three days because he had to move. The claimant did not call Mr. Dieke to report his absence as he had in the past. Ms. Tomash does not remember if Ms. Welch told her the claimant would not be into work.

Prior to this three day incident, the claimant had no warnings for his attendance. The employer did know that the claimant was not going to be into work as he had to move to deal with his work-related injury.

## 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.

The employer knew that the claimant would not be into work as Ms. Welch told Ms. Tomash.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Since claimant did not have three consecutive no-call/no-show absences as required by rule in order to consider the separation job abandonment, the separation was a discharge and not a quit.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

Under the circumstances listed, the claimant had no prior warnings for attendance. He missed three day's work to move and had no other unexcused absences. While the claimant could have done a better job communication with the employer, based upon his attendance record and under these limited circumstances; missing three days does not meet the excessiveness standard. Benefits are allowed.

**DECISION:**

The November 25, 2014 (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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