IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT J SELLWOOD
Claimant

CARGILL MEAT SOLUTIONS CORPORATION
Employer

APPEAL NO. 10O-UI-03025-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/05/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 24, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 14, 2010. Claimant participated. Employer participated through Jessica Sheppard.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a production worker and was separated from employment on March 10, 2009. When faced with a last-chance agreement for attendance he declined and employer considered him to have quit the employment. He had missed work and was assigned attendance points on September 10, 2008 (tardiness related to his wife's pregnancy-related medical appointments and was excused in advance with his supervisor), September 27, 2008 (absent due to claimant's illness, his wife's pregnancy complications, a sick infant, court appointments for child custody dispute for which he provided documentation to the employer), October 3, 2008 (absent), October 7 (absent), October 22 (he was considered to have failed to clock in if the machine did not accept his card swipe but he did not forget to do so), October 31 (absent), November 1 (absent), November 3 (absent), November 5 (tardy), November 10 (absent), and December 30, 2008 (time clock failure to register the swipe), February 20 2009 (absent) and March 5, 2009 (absent).

The last absence involved a sick baby and claimant's wife called him at work. He got permission to leave from his supervisor who told him if he did not get back to work that day he would make sure he got enough points to be fired. He was at the emergency room until his shift was scheduled to end so he called the next morning and was told that he would be fired and to bring in his identification badge and retrieve his personal belongings from his locker. On his way out from doing so he was called into the office and was told he could have a last-chance agreement but would have to start work immediately. Claimant told the employer he had his

wife and baby with him, his wife could not drive, and he did not have his work clothes with him since he believed he was fired. They told him he could send her home in a taxi and buy an $80.00 pair of boots from the employer but would not allow him to take her home and return with his work clothes.

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 § 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 or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which he was discharged was related to properly reported emergency illness of an infant, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The April 24, 2009 (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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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css