

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DERRICK D JONES
Claimant

ALL IN A DAY LLC
Employer

APPEAL 15A-UI-10856-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (2)

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 September 25, 2015, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2015. Claimant participated. Employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant completed an assignment at Morningside College. He completed various assignments from July 23, through August 12, 2015. On August 26 the claimant was to begin a new assignment at Richardson. He was to be at the employer's offices to sign paper work at 6:30 a.m. He overslept and did not go into the employer's office. He was not allowed to work on that assignment. The claimant went into the employer's office the next day and was told he could not go to the Richardson assignment. He has sought additional work with the employer, a temporary agency, but no additional work has been offered to him. The claimant had no prior warnings for attendance or tardiness.

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 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 § 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 § 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).

A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The September 25, 2015, (reference 04) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css