

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL V HARRIS**

Claimant

**APPEAL NO. 09A-UI-06202-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**Original Claim: 06/15/08**

**Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Paul V. Harris (claimant) appealed a representative's April 9, 2009 decision (reference 04) that concluded he was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2009. The claimant participated in the hearing with his girlfriend, Crystal Degener, as a witness. Kris Travis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 13, 2008. The claimant worked as a full-time employee in the ham bone department. The employer's attendance policy informs employees they must call the employer 30 minutes before a scheduled shift when they are unable to work as scheduled. If an employee notifies the employer before a scheduled shift, the employer assesses the employee one attendance point for not working as scheduled. If an employee does not call or report to work as scheduled, the employer assesses the employee three attendance points. When an employee accumulates 14 attendance points, the employer discharges the employee.

On February 27, 2009, law enforcement officials came to the employer's plant and arrested the claimant when he was at work. The claimant was arrested for a parole violation. The claimant was released from jail on March 9, 2009.

The employer did not have any messages from the claimant or anyone on his behalf that he was unable to work while he was in jail. On March 10, when the claimant returned to work, the employer informed him he no longer had a job.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

Even though Degener asserted she called the employer each day the claimant was scheduled to work 30 minutes before his shift started, it is strange the employer did not have a record of even one call. As result, the claimant's assertion that Degener called each day he was in jail is not supported by the evidence. The employer's testimony that the claimant did not call or report to work is credible and is reflected in the findings of fact.

The law presumes a claimant has voluntarily quit employment when a claimant becomes incarcerated. 871 IAC 24.25(16). In this case, the claimant overcame the presumption because he had no idea he had violated the conditions of his parole. In this case, the employer discharged the claimant.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The employer knew the claimant was in jail and would not be at work until he was released. Even though the claimant was in jail, he still had an obligation to keep the employer informed. When a claimant is unable to work as scheduled because he is in jail, it is an unexcused absence. Since the credible evidence does not establish anyone on the claimant's behalf kept in contact with the employer each day the claimant was in jail and scheduled to work, the evidence establishes the employer discharged the claimant for excessive unexcused absenteeism, which constitutes work-connected misconduct. Therefore, as of March 22, 2009, the claimant is not qualified to receive benefits.

#### **DECISION:**

The representative's April 9, 2009 decision (reference 04) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 22, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw