

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IZAHIA L RUSHMAN**

Claimant

**APPEAL NO: 10A-EUCU-00350-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 08/09/09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Izahia L. Rushman (claimant) appealed a representative's April 13, 2010 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2010. The claimant participated in the hearing. Jessica Shepard appeared on the employer's behalf. An issue as to whether the appeal was timely was included on the hearing notice, but was not further considered during the hearing as the administrative law judge determined that the issue had been included in error, as the appeal was initialed by an Agency representative as having been hand-delivered to the local Agency office on the deadline date for the appeal. 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 7, 2009. He worked full time as a production worker on the second shift in the employer's Wapello County, Iowa pork processing facility. His last day of work was March 8. The employer asserted that he had voluntarily quit by job abandonment as a no-call/no-show for work on March 10, March 11, and March 12. However, the claimant had reported for work on March 10; he found that his locker had been cleared out by a supervisor, and was then told by his trainer/supervisor that he had pointed out under the attendance policy, that his employment was ended.

The employer has a ten-point attendance policy. Prior to March 8 the claimant had eight points. All but one was due to personal illness or injury. One of those points, for March 5, was due to a work-related injury incurred on March 4. On March 8 the claimant reported back for work but

reported directly to the employer's medical office to address his injury. The doctor sent him to the local hospital to get an x-ray. The claimant returned and then was sent to the line with some restrictions. The supervisor on the line had no work for the claimant within his restrictions. As a result of there being no work within his restrictions and the pain he was in, the supervisor agreed that the claimant could leave, so he did. However, the employer assessed a point for this occurrence, bringing the claimant to nine points.

On March 9 the claimant called in an absence due to continued pain from his injury. As he did not believe this was a personal illness or injury, he reported the reason for the absence as "business," as he attributed the absence to the employer's business. The employer assessed a point for this occurrence, bringing the claimant to ten points. The employer then cleared out the claimant's locker and when he attempted to report back for work on March 10 he was told he had pointed out.

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

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by job abandonment. The claimant reasonably understood that given the fact that his locker was cleared out and that his trainer/supervisor told him he had pointed out that he was discharged. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct

must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his attendance. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness or injury 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. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Therefore, nine of the ten occurrences leading to the discharge decision are excusable; there has not been a showing of "excessive unexcused" absences. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

#### **DECISION:**

The representative's April 13 2010 decision (reference 04) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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