

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ACUOTH M MAJOK
Claimant

SMITHFIELD FARMLAND CORP
Employer

APPEAL 17A-UI-04907-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 25, 2017. Claimant participated. Employer participated through human resource manager Becky Jacobsen. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 29, 2016. Claimant last worked as a full-time boner. Claimant was separated from employment on April 14, 2017, when he was terminated.

Employer has a policy requiring employees to report an absence prior to their shift beginning by calling into a hotline. Employees are assessed three points for a no-call/no-show absence under the same policy. Employees are terminated upon accrual of 12 attendance points. Claimant was aware of the policy.

Claimant was arrested on April 8, 2017. Claimant was charged with "DWI-prior offender." Claimant was next scheduled to work on Monday, April 10, 2017. Claimant was not able to call employer to report his absences because his phone was not charged and he did not have the hotline number memorized.

On April 12, 2017, claimant made an inmate request to have his phone charged so he could obtain his employer's phone number. His request was denied. On April 12, 2017, claimant

called a friend and asked him to inform employer he was incarcerated. However, employer was never made aware of claimant's incarceration. Claimant was absent and did not report his absence for work on April 10, 11, and 12, 2017. By April 14, 2017, claimant had accrued 14.5 attendance points and was sent a termination letter.

Claimant pleaded guilty to the crime of DWI on April 12, 2017. Claimant was sentenced to and served ten days in jail. On April 20, 2017, claimant was released from jail and returned to work. Claimant was informed he had been terminated.

REASONING AND CONCLUSIONS OF LAW:

First it must be determined whether the separation was a voluntary quitting or a discharge from employment.

If claimant voluntarily resigned, he has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179, 210 (Iowa 2016). "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". *Id.* At 207 (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1986)).

The term "voluntary" requires volition and generally means a desire to quit the job. *Id.* At 210 (citing *Bartelt v. Emp't Appeal Bd.*, 494 N.W.2d 684, 686 (Iowa 1993); *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Cook*, 299 N.W.2d at 701 (Iowa 1986); *Moulton v. Iowa Emp't Sec. Comm'n*, 34 N.W.2d 211, 213 (1948)). There must be substantial evidence to show that claimant's absence from work was voluntary. Incarceration, in and of itself, can never be considered volitional or voluntary.

In this case the leaving was not voluntary as claimant was incarcerated. Thus, no analysis into whether claimant left with good cause attributable to the employer is necessary because the case must be analyzed as a discharge. *Id.* (citing *Ames v. Emp't Appeal Bd.*, 439 N.W.2d 669, 673-74 (Iowa 1989)(employees refusing to go to work and cross union picket line due to the risk of violence associated with crossing the picket line was not a voluntary quitting of employment)).

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins* at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10. Absences due to properly reported illness are excused, 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. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp’t Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant was absent on April 10, 11, and 12, 2017. This is excessive. It was impossible for claimant to properly report the absences because he was not allowed access to his phone which contained employer’s telephone number. Claimant asked a friend to contact employer regarding his absences. However, the friend failed to do so.

Even if the absences were properly reported, they are still unexcused because claimant was absent for purely personal reasons. Claimant was absent due to incarceration for a crime to which he entered a plea of guilty. Claimant thus admitted to driving while under the influence. The reasonably foreseeable consequence of driving under the influence is incarceration. Therefore claimant intentionally created the circumstances that caused his absence from work for personal reasons and the absences are unexcused.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was terminated for excessive, unexcused absenteeism. Benefits are withheld.

DECISION:

The May 5, 2017, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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