

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE C JAPHET
Claimant

APPEAL NO. 10A-UI-15669-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 08/15/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 2, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Matthew Case, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in February 2010. He worked as a full-time general laborer. The last day the claimant worked for the employer was August 5, 2010.

The employer understood the claimant was ill and unable to work August 5 through 16. The claimant was on a leave of absence these days. On August 16, the claimant called to report he was unable to work for personal reasons. On August 17, a female called the employer to report the claimant was unable to work as scheduled. The employer did not have any other messages from the claimant after August 17, 2010. The claimant was scheduled to work August 18, 19, and 20.

The employer's policy informs employees that if they do not call or report to work for three consecutive days, the employer considers them to have abandoned their employment. The employer sent the claimant a letter on August 26, 2010, informing him that he was no longer considered an employee because he had abandoned his employment.

The claimant was in Des Moines for family issues in mid August. He established a claim for benefits during the week of August 15, 2010. The claimant has filed for and received benefits since August 15, 2010.

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. This case could be viewed as a voluntary quit or as a discharge. The outcome is the same under either scenario.

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).

Even though the claimant asserted he called the employer every day he was not at work, his mere assertion he did this does not establish this as fact. Since the claimant did not even know how long he had been absent from work, the employer's detailed testimony is deemed more credible than the claimant's testimony. The facts show the claimant was released to return to work on August 16, but did not do so. On August 16 and 17, he may have been in Des Moines for family issues. The evidence establishes he did not call or report to work anytime after August 17. When the employer discharged him on August 20 for three consecutive days of failing to work or call the employer, the claimant committed work-connected misconduct for excessive unexcused absenteeism. As of August 15, 2010, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since August 15, the issue of overpayment or whether he is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's November 2, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 15, 2010. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw