

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEASHAUN S HAYES
Claimant

ABRH LLC
Employer

APPEAL 18A-UI-05077-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/08/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 25, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2018. The claimant, Keashaun S. Hayes, participated. The employer, ABRH, L.L.C., participated through Virginia Willard, General Manager; and Klaren Bentley of Talx/Equifax represented the employer. Employer's Exhibits 1 through 6 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a back of house cook, from May 13, 2017, until April 2, 2018, when he was discharged. Claimant last reported to work prior on March 18, 2018. On March 18, claimant voluntarily surrendered himself at the jail to serve two weeks for a probation violation. Claimant admits that he had not paid the fines that led to this probation violation. He explained that he agreed with the judge and the prosecutor to serve time in jail for this violation. Claimant initially believed he was going to be permitted to do work release. However, after becoming incarcerated, he was informed that he would not be allowed to leave for work when scheduled. Claimant was released from jail on or about April 2, 2018. When he reported back to the employer, he was told that he was discharged. Claimant had numerous absences in the past. Claimant was a no-call/no-show for his scheduled shifts on July 15 and 16, 2017. On August 5 and 6, 2017, claimant was late to work. On August 19, 2017, claimant miscalculated the time and was thirty minutes late for work. On December 2, 2017, claimant woke up late and arrived at work 45 minutes late. On March 11, 2018, claimant was a no-call/no-show. On March 12, 2018, claimant was one hour late due to car trouble. Claimant had been given numerous warnings due to his attendance, and he was made aware that his job was in jeopardy because of absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to absenteeism caused by incarceration. Benefits are withheld.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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(1)a provides:

Discharge for misconduct.

(1) *Definition.*

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Code section 96.5(11) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. *Incarceration--disqualified.*

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

Here, claimant admits that he failed to pay fines which resulted in the probation violation that caused his incarceration. While claimant was initially supposed to be granted work release, it appears he became ineligible for that at some point. Because claimant was convicted of the behavior that led to his incarceration, resulting absences due to claimant's failure to comply with the work release policies are volitional and constitute misconduct. As such, the separation is disqualifying.

DECISION:

The April 25, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn