

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH A MATHENY**  
Claimant

**APPEAL NO. 09A-UI-14619-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLOOMFIELD FOUNDRY INC**  
Employer

**Original Claim: 02/01/09  
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 25, 2009 (reference 01) decision that denied benefits based upon the August 14, 2009 separation. After due notice was issued, a telephone conference hearing was held on October 27, 2009. Claimant participated with his brother Jack Matheny. Employer participated through Operations Manager Leroy Arndt and Payroll Clerk Sheila Birchmier.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant missed the work from August 10 through August 13, 2009 because he was in jail from August 10 until August 16, 2009. His girlfriend told employer he was absent because of personal business but would not give more detail. Claimant and Arndt met on August 16 to obtain more information about the absence, other than the rumors employer had heard. He had not been warned about attendance, but employer considered each day of the absence a separate occurrence and would have warned him after each had he reported. Employer ended his employment on August 19, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

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.

871 IAC 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.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(16) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Whether voluntary or involuntary the claimant's incarceration on multiple scheduled workdays was a disqualifying separation, especially since the claimant's girlfriend misrepresented the reason for his absence. Employers are not expected to hold employment for incarcerated employees, regardless of prior warning. Benefits are denied.

**DECISION:**

The representative's decision dated September 25, 2009 (reference 01) is modified without change in effect. The claimant was discharged due to job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw