

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN C WEAVER
Claimant

XPAC
Employer

APPEAL 20A-UI-10228-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On August 27, 2020, the claimant filed an appeal from the August 25, 2020, (reference 09) unemployment insurance decision that denied benefits based on excessive unexcused absences. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2020. Claimant participated. Employer did not participate. The employer provided a phone number, however did not pick up. A voice message was left informing the employer to contact the appeals section to inform the undersigned it wanted to participate.

ISSUE:

Did claimant voluntarily quit with good cause attributable to his employer?
Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in June or July 2019. Claimant last worked as a full-time material handler. Claimant was separated from employment on June 16, 2020 when he received a call from Erin Hammond, of the Human Resources Department, telling Claimant he had been terminated. Ms. Hammond told claimant that they could not hold open the position any longer and he was terminated.

Claimant's work for the employer primarily consists of driving a fork truck. Claimant testified that he does not need to lift anything above 25 pounds while he is at work. Claimant testified that if there was something above 25 pounds other workers would help. Claimant's un rebutted testimony was that he could perform his work as a material handler.

On January 19, 2020 claimant went to the emergency department for a non-work related illness. Claimant's next day at work was January 23, 2020. After claimant worked that day he received a call from Ms. Hammond on his way home from work. Ms. Hammond said that claimant had a medical restriction of 25 pounds and that he would need to go on medical leave. On February 27,

2020 claimant received a letter stating that the employer placed him on a personal leave of absence from January 13, 2020 through April 13, 2020. After the leave of absence expired, claimant would call in each day and report his absence on the attendance phone line until he was terminated.

REASONING AND CONCLUSIONS OF LAW:

The first issue to determine is whether claimant's absences from work were excessive and unexcused and therefore misconduct. I find they were neither unexcused or excessive and were not misconduct.

In order for a claimant's absences to constitute misconduct that would disqualify claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557. In this case, claimant was willing to work and the employer did not allow claimant to return to work. The claimant did not commit job related misconduct.

The next issue is whether claimant voluntarily quit his employment. I find he did not.

Iowa Code section 96.5(1)d provides:

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

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Claimant had a non-work related injury. Claimant testified that he was able to perform the duties of his previous work. The employer did not present evidence that claimant was unable to perform his regular duties. The claimant was put on leave by his employer and then terminated. I find the claimant's separation was with good cause attributable to the employer.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 25, 2020, (reference 09) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.



James F. Elliott
Administrative Law Judge

October 8, 2020
Decision Dated and Mailed

je/sam