

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J GREEN
Claimant

APPEAL NO: 09A-UI-19082-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/22/09
Claimant: Appellant (5)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's December 17, 2009 decision (reference 01) that concluded he was not qualified to receive benefits and the employer's account was exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on February 3, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 on October 20, 2008. The claimant worked full time. The last day the claimant worked for the employer was October 31, 2009. The employer's attendance policy informs employees they will be discharged if they accumulate more than 13 attendance points in a rolling calendar year.

The claimant was arrested and incarcerated on October 31, 2009. That day or the next day, the claimant called his supervisor from jail about his job. The claimant's supervisor told him that if he could report to work the next day, he would still have a job. The claimant was unable to get work release or get immediately released from jail. The claimant was not released from jail until November 20, 2009.

The claimant understood he had been discharged because he had too many attendance points. Each day the claimant was in jail and unable to work, he received three points. The employer sent him a letter on November 2, 2009, informing him about the termination of his regular group health benefits because he had been terminated. (Claimant Exhibit A.)

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. The evidence does not establish that the claimant intended to quit his employment. Instead, the employer discharged him.

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).

The claimant knew or should have known his job would be in jeopardy if he was unable to work November 1 through 20. The claimant's absence from work November 1 through 20 was not excused. The evidence establishes the claimant's off-duty conduct amounts to work-connected misconduct when his incarceration prevented him from working November 1 through 20. As of November 22, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 17, 2009 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not quit his employment. Instead, the employer discharged him for excessive unexcused absenteeism or work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 22, 2009. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css