

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL R JOHNSON
7085 BLOOMFIELD RD LOT 95
DES MOINES IA 50320

KATECHO INC
4020 GANNETT AVE
DES MOINES IA 50321

Appeal Number: 04A-UI-00450-RT
OC: 12/07/03 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Required Findings (Able and Available for work)

STATEMENT OF THE CASE:

The claimant, Michael R. Johnson, filed a timely appeal from an unemployment insurance decision dated January 7, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 5, 2004, with the claimant participating. Tanya Fallen, Human Resources Administrator, participated in the hearing for the employer, Katecho, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time machine operator from February 4, 2003 until he separated from his employment on November 25, 2003, which was his last day of work. On that day, in the middle of his shift, the claimant was arrested and incarcerated and put in jail until December 10, 2003. The reason for the claimant's incarceration was totally unrelated to his employment. He called the employer on or about November 27, 2003 to inform it that he was in jail but did not know when he would get out. When the claimant got out of jail on December 10, 2003, he called the employer and informed it that he was then available for work and asked if he had a job. The employer informed him that he did not. The employer had already filled the claimant's position.

Prior to November 25, 2003, the claimant had an absentee problem, having six absences, one for personal illness and five for personal reasons but the claimant would not indicate for what he was absent on those occasions. The claimant got a written warning for his attendance on October 14, 2003.

After getting out of jail, the claimant was waiting to be admitted to the Fort Des Moines Correctional Center. While waiting, he sought work, and was available for work, and able to work. On January 5, 2003, the claimant went into the correctional center and for four days he was not available for work because he was going through orientation, but thereafter, he was available for work because the correctional center had work release programs. The claimant had placed no other restrictions on his availability for work and had placed no restrictions on his ability to work. The claimant has been actively and earnestly seeking work.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able and available for work. The claimant is not ineligible to receive unemployment insurance benefits for this reason but is disqualified to receive unemployment insurance benefits as a result of his disqualifying separation from the employer.

Iowa Code Section 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 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 section 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 section

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.

871 IAC 24.25(16) provides:

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

Iowa Code Section 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(1)a, (7) 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. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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.

The first issue to be resolved is the character of the separation. The employer's witness, Tanya Fallen, Human Resources Administrator, testified that the claimant actually quit when he was arrested and taken away and confined in jail. The claimant testified that he was terminated.

Both witnesses agree as to the date of separation, November 25, 2003, and both agree that the claimant was arrested that day while at work and was incarcerated until December 10, 2003 and could not work during that period of time because of his incarceration. The administrative law judge concludes that the claimant became incarcerated and therefore is deemed to have left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with his employer herein with good cause attributable to the employer. The only reason for the claimant's separation was his incarceration from November 25, 2003 to December 10, 2003. The claimant testified that this was totally unrelated to his employment. The administrative law judge concludes that his incarceration was not attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The claimant was absent for a number of days from November 25, 2003 through December 10, 2003 because he was incarcerated in jail unrelated to his employment. These absences were not for reasonable cause or personal illness. A couple of those absences were not even properly reported because the claimant himself testified that he did not call the employer until November 27, 2003 to inform it that he was in jail and that he did not know how long he would be in jail. Prior to the claimant's incarceration, the claimant also had an absentee problem having six absences, one for personal illness and five for personal reasons but the claimant did not provide reasons for those. The claimant received a written warning on October 13, 2003 for his attendance. The administrative law judge would conclude that the claimant's absences for personal reasons and while he was incarcerated were not for reasonable cause or personal illness and were excessive unexcused absenteeism. Therefore, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and he would still be disqualified to receive unemployment insurance benefits.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he was able, available, and earnestly and actively seeking work at all material times hereto except for benefit week ending January 4, 2004 when he was at the Fort Des Moines Correctional Center. The claimant testified that after being released from jail on December 10, 2003 the claimant was free until he entered the correctional center on January 5, 2003. For four days the claimant was not available for work because he could not leave the correctional center because he was going through orientation. After the four days, the correctional center allowed a work release and the claimant was available for work thereafter. Accordingly, the administrative law judge concludes that the claimant was not able and available for work for benefit week ending January 10, 2004 and would be ineligible to receive unemployment insurance benefits for that week. The claimant testified that at all other times he had placed no restrictions on his availability for work and no restrictions on his ability to work and that he was earnestly and actively seeking work both while waiting to be admitted into the correctional center but after being incarcerated and four days after entering the correctional center. Accordingly, the administrative law judge concludes that with the exception of benefit week ending January 10, 2004, the claimant was able, available, and earnestly and actively seeking work and would be eligible to receive unemployment insurance benefits. However, as noted above, the claimant was disqualified to receive unemployment insurance benefits throughout that period because the separation from the employer was disqualifying.

DECISION:

The representative's decision of January 7, 2004, reference 02, is affirmed. The claimant, Michael R. Johnson, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

kjf/b