

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDON L WEGNER

Claimant

HORMEL FOODS CORPORATION

Employer

APPEAL 14A-UI-12815-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/09/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the December 2, 2014 (reference 02) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 9, 2015. Claimant participated with union representatives Tony Detrick and Mike Sunken. Claimant acted as his own representative during the hearing. Employer participated through human resource manager Frank Velazquez; lead supervisor Tony Seebecker; supervisor Bruce Elliott; and plant manager Jeremy Rummel. Todd Richardson of Employers Unity represented the employer. Employer's Exhibit One (pages 1 – 17) was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a pallet transfer operator from November 20, 2001 and was separated from employment on November 14, 2014.

On November 7, his 47th day of work in a row, he was not feeling well but reported and clocked in at 6:28 a.m. for his 6:30 a.m. shift. He went to his locker to drop off his wallet and then went to the hand-washing station before going to his work station. While at the hand-washing station Seebecker approached him and chastised him about not arriving earlier. Claimant approached his work station, saw Elliott, and told him "I'm sick, I'm going home and I'm pissed off" because of the way Seebecker spoke to him. Elliott asked him if he leaving because he was sick or because he was "pissed off." Claimant replied he was sick and proceeded to leave. Elliott did not say he could not leave and did not ask him for supporting medical documentation. Claimant thought Seebecker made eye contact with him while he was in the process of leaving. Seebecker did not tell claimant he could not leave and did not ask him for medical

documentation. Several hours later after claimant had gone home and rested, Velasquez saw him driving his truck towards Swea City and assumed he was going to the landfill since the back of his truck was filled with debris. Claimant drove to his mother's home in Swea City and dropped off his children for her to care for while he rested in anticipation of working the weekend. Velasquez confronted him in the driveway about the debris. Claimant told him the children had finished loading the debris from the yard and he strapped it down. He did not go to the landfill.

He worked Saturday and Sunday, November 7 and 8, and saw the doctor on Monday after the suspension meeting. The doctor diagnosed him with exhaustion, gave him medications, and told him to rest. He did not give the medical documentation to the employer and the employer did not request it. On November 13, in lieu of discharge, claimant declined to work under a last chance agreement that would require him to dismiss his pending union grievance and remain unpaid for his time away from the plant since November 10 (Employer's Exhibit One, pp. 16 and 17). He refused because he had handled reporting leaving work before the shift end the same way in the past without disciplinary consequence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. While claimant's anger at Seebecker and later driving to his mother's house may have reasonably caused the employer to become suspicious about the genuineness of his illness causing him to leave work early, claimant's credibility about his illness is bolstered by his medical practitioner's hearsay statement, which is reasonable given the consecutive work day history. Given that no one told him he could not leave or must report leaving early other than the way he did, the absence is also considered properly reported. Because his last absence was related to properly reported illness, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The December 2, 2014 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/can

NOTE TO EMPLOYER:

If you wish to change the employer agent of record, please access your account at: <https://www.myiowauai.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
http://www.youtube.com/watch?v=_mpCM8FGQoY