

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELVAN W LANDERMAN**  
Claimant

**APPEAL NO. 09A-UI-15613-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 05/03/09**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Elvan Landerman filed an appeal from a representative's decision dated October 14, 2009, reference 03, which denied benefits based on his separation from DES Staffing Services, Inc. (DES). After due notice was issued, a hearing was held by telephone on November 19, 2009. Mr. Landerman participated personally. The employer participated by Shane Sorenson, General Manager.

**ISSUE:**

At issue in this matter is whether Mr. Landerman was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Landerman was employed by DES beginning July 29, 2009. He was assigned to work full time at Iowa Spring. His last day of work was August 26. He gave advance notice that he would be absent on August 27 in order to undergo a medical procedure. He was next scheduled to work on August 31.

Mr. Landerman was absent due to car trouble from August 31 through September 8, a total of five working days. He was arrested on September 9 and remained in jail until the evening of September 11. He did not contact the employer on September 9, 10, or 11 to report his intended absences. He was told he no longer had employment when he contacted DES on September 14.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that Mr. Landerman's separation should be considered a voluntary quit. He was absent from work for three consecutive shifts without notice to the employer. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code

section 96.5(1). The evidence of record does not establish any good cause attributable to either DES or Iowa Spring for the separation.

Even if the administrative law judge were to conclude that Mr. Landerman was discharged, he still would not be entitled to job insurance benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Landerman missed eight consecutive shifts between August 26 and September 14. Five of the absences were due to lack of transportation and three were due to incarceration. Absences due to matters of purely personal responsibility, such as transportation and incarceration, are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The three unexcused absences caused by Mr. Landerman's incarceration are sufficient, standing alone, to constitute excessive unexcused absenteeism, especially in light of the relatively short duration of his employment. The fact that he had eight unexcused absences during a six-week period of employment amply supports a conclusion of excessive unexcused absenteeism, which constitutes a substantial disregard of the standards an employer has the right to expect. Therefore, if the separation was considered a discharge, he would be disqualified from receiving benefits.

**DECISION:**

The representative's decision dated October 14, 2009, reference 03, is hereby affirmed. Mr. Landerman left his employment with DES without good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs