

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON MCCANN
Claimant

SMITH SEWER SERVICE INC
Employer

APPEAL 21A-UI-01182-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/15/19
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quitting of Employment
Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Admin. Code r. 871-24.25(20) – Voluntary Quit for Compelling Personal Reasons
Iowa Admin. Code r. 871-24.32(7) – Excessive, Unexcused Absenteeism

STATEMENT OF THE CASE:

Jason McCann (Claimant) appealed a representative's July 2, 2020, decision (reference 08) that denied benefits based on separation from employment with Smith Sewer Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2021. Claimant participated personally. The employer participated by Donald Smith, President.

The administrative law judge took official notice of the administrative file. 20A-UI-01181-LJ, 20A-UI-01182-LJ, 20A-UI-01183-LJ, and 20A-UI-01184-LJ were heard at the same time.

ISSUE:

The issue whether the claimant voluntarily quit his employment without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 17 2019, as a full time service technician. Claimant last reported to work on March 11, 2020.

On March 11, 2020, Claimant came to Smith and told him that he needed to take several weeks off work to care for his children. This was at the beginning of the COVID-19 pandemic hitting Iowa, and schools were shutting down, so Claimant needed to stay with his three school-aged children during the day. Smith told him it would be fine if Claimant was gone from work for several weeks.

Claimant never returned to work after March 11. The employer texted him and called him several times in April to try and see if or when he would be returning, and he never answered or responded. On May 3, the employer texted Claimant and told him they were going to pick up

the work van from his house. Later that day, Smith and service manager Bill retrieved the van from Claimant's property.

Smith began running an ad for Claimant's position in June 2020, after Claimant failed to return to work. The employer has yet to hire a replacement to fill Claimant's position.

Claimant testified that he became available to work again after he was "kicked off unemployment" in June, when everything opened back up. He had some job interviews in June and found a full-time job that he started on July 7, 2020. His children started going to daycare that same day.

The claimant filed for unemployment insurance benefits with an effective date of September 15, 2019. His weekly benefit amount was determined to be \$481.00. The claimant received benefits of \$481.00 per week for the week ending September 21, 2019, and from March 22, 2020, to the week ending June 13, 2020. This is a total of \$6,253.00 in state unemployment insurance benefits after the separation from employment. He also received \$6,600.00 in Federal Pandemic Unemployment Compensation for the eleven-week period ending June 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Claimant voluntarily quit his employment or was discharged from his employment, and whether he is qualified for benefits based on the separation from employment. This administrative law judge finds that under either analysis, a quit or a separation, Claimant is not entitled to unemployment insurance benefits.

First, Claimant's separation will be analyzed as a quit of employment. Iowa Code §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.

Iowa Admin. Code r. 871-24.25(20) 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 without good cause attributable to the employer: ...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case, if Claimant was the person who severed the employment relationship, then he did so because he needed to take care of his children. This is certainly a compelling personal circumstance. However, it is not a good-cause reason that is fairly attributable to his employer. While claimant's leaving the employment may have been based upon good personal

reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

In the alternative, Claimant's separation can be analyzed as a discharge from employment. 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.

Excessive absences are not considered misconduct unless unexcused. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

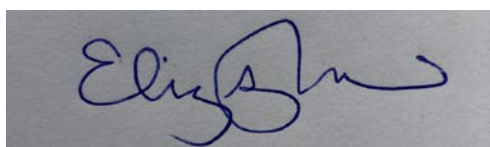
The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). See also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

In this case, Claimant informed Smith in early March that he needed a leave of absence for several weeks. He then proceeded to completely fall out of contact with the employer, failing to

either initiate any calls or texts to let them know he needed additional leave or respond to their calls or texts inquiring about his status. Smith credibly testified that Bill told Claimant in the text messages that he needed to get in contact with the employer to preserve his employment. The employer cannot reasonably be expected to grant indefinite leave to an employee, even during a global pandemic. The administrative law judge finds claimant was discharged from employment for excessive, unexcused absenteeism effective June 1, 2020, when the employer listed his job as vacant and available. Benefits are withheld.

DECISION:

The July 2, 2020, decision (reference 08), decision is modified in favor of Claimant/appellant. Claimant was discharged from work due to excessive, unexcused absenteeism effective June 1, 2020. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 26, 2021
Decision Dated and Mailed

lj/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.