

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALLAS R BERNS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 15A-UI-04799-EC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/27/14
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24-32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant/appellant, Dallas Berns, filed an appeal from the April 16, 2015, (reference 03) unemployment insurance decision that denied benefits based upon its determination that she voluntarily quit her employment without good cause attributable to her employer. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2015. The claimant participated. The employer, Tyson Fresh Meats Inc., participated through HR Clerk, Krista Fox.

ISSUE:

Was the separation a discharge for misconduct or a voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker on the loin line from January 21, 2013, and was separated from employment on February 27, 2015, when she failed to respond to a 72 hour notice that she did not receive. The last day the claimant worked for this employer was January 30, 2015. The claimant was on a leave of absence for ten days, and then called in sick on most of the next ten days. The claimant properly followed the employer's policy when she called in every day she was scheduled to work. (Fox testimony)

The claimant's son was born on July 31, 2013. He had health problems which required a stay in the Iowa City hospital. The claimant remained with her infant son during his hospital stay. The claimant followed the proper procedures for a leave of absence and additional excused absences from work throughout this time period. (Berns testimony)

The claimant's employment ended when she failed to respond to a final written notice which was sent by certified mail. This notice was not also sent via regular mail. The claimant did not actually receive or read this notice. The employer did not submit a copy of this notice as an

exhibit. The employer terminated her employment because she failed to provide documents in response to this final warning letter. (Fox testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. During the hearing, the parties agreed that the claimant did not voluntarily quit her employment, but was discharged.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in terminating the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

Misconduct justifying termination of an employee and misconduct justifying denial of unemployment insurance benefits are two separate determinations. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Absences related to issues of personal responsibility such as

transportation, lack of childcare, and oversleeping are typically not considered excused. *Higgins, supra*.

However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). This claimant's infant son was in the hospital in another city for an extended stay. She properly notified her employer of all of her absences related to her infant son's illness. All of her absences during the relevant time period were excused.

The claimant's failure to pick up an item sent via certified mail and act on the contents of a letter she never received does not constitute disqualifying job related misconduct. Furthermore, according to the Iowa Supreme Court, providing a notice relating to a basic constitutional property right via certified mail violates due process. *War Eagle Village Apartments v Plummer*, 775 N.W.2d 714, 722 (Iowa 2009). In *War Eagle*, the court specifically noted that a statutory scheme that allowed a notice to be provided via certified mail only was not "reasonably calculated to reach the intended recipient." *War Eagle Village Apartments v Plummer*, 775 N.W.2d 714, 721 (Iowa 2009), referencing and interpreting Iowa Code § 562A.29A(2)(2005) and Iowa Code § 562A.8(2005).

Furthermore, an employer's attendance policy is not dispositive of the issue of unemployment insurance benefits eligibility. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. This claimant properly reported all her absences during the relevant time period. Because her absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. No disqualification is imposed.

DECISION:

The April 16, 2015, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/css