

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT D FLEHARTY
Claimant

ELITE STAFFING GLOBAL INC
Employer

APPEAL 15A-UI-06827-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/04/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the June 10, 2015, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2015. Claimant did not participate. Employer participated through Kathy Achenbach, Branch Manager and was represented by Joseph McDonnell of Personnel Planners.

ISSUE:

Was the claimant discharged due to job-connected misconduct or did he voluntarily quit his employment 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 last assigned to work at Ferrara Candy Company in Creston Iowa full-time as a packer beginning on March 31, 2015 through April 13, 2015 when he was discharged. The claimant was in the locker room at Ferrara on April 13 prior to the start of his work shift. He clearly intended to work that day. He left the locker room without punching into the time clock or without telling anyone at Ferrara that he was leaving. He called Ms. Achenbach to tell her he had to leave work because he was ill. He provided no explanation as to why he had not told anyone at Ferrara he was leaving. Ms. Achenbach called him back later on April 13 and told him he was discharged because he was considered to have walked off the job. The claimant had not punched in to work when he left the factory. The claimant had no other instances of absenteeism or warnings.

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.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Since claimant did not have three consecutive no-call/no-show absences as required by rule in order to consider the separation job abandonment, the separation was a discharge and not a quit.

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 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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The June 10, 2015 (reference 04) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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