

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN R LITTRELL
Claimant

ORCHESTRATE MANAGEMENT ASSOC
Employer

APPEAL 15A-UI-05764-EC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/26/15
Claimant: Appellant (1)

Iowa Code §96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.25(4) – 3 No-Call/No-Show Absences

STATEMENT OF THE CASE:

The claimant/appellant, Jonathan Littrell, filed an appeal from the May 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 22, 2015. The claimant participated. The employer, Orchestrate Management Associates, participated through Rachelle Ricketts, payroll specialist. The employer submitted exhibits which were collectively marked as Exhibit E and were admitted into the record without objection.

ISSUE:

Was the separation from employment 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 baker from June 16, 2013, until this employment ended on April 6, 2015, when he was absent for at least three days without giving proper notice to his employer in violation of a company rule.

The claimant was scheduled to work on the overnight shift, from 12:01 a.m. until 8:00 a.m., during the week of March 30 through April 3, 2015. He was scheduled to work the same shift on Monday, April 6, 2015.

On March 30, the claimant called in at 2:06 a.m., more than two hours after his work shift began, leaving a message for his supervisor, but not reporting any reason for his absence.

On March 31, the claimant called his supervisor at 1:09 a.m., more than an hour after his work shift began.

Later on March 31, the claimant called in at 11:36 p.m., shortly before his April 1 work shift began at 12:01 a.m., reporting that he would not come in because he was ill. He did not reach

his supervisor directly. He did not have his supervisor's cell phone number. He called and left a message on the main store telephone number. He did not try to directly reach his supervisor again, and did not call the store number again to report his continued absences.

The claimant did not call in and did not appear for his work shifts on April 2, 3 or 6. He did not contact the employer again after his last call shortly before his April 1 midnight shift.

The claimant knew that his employment could be terminated without warning if he failed to report for work for three consecutive scheduled shifts. He knew that he was required to call in at least two hours before his shift began.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, 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.

Iowa Admin. Code r. 871-24.26(6)b 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 with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

A voluntary quit based on illness is clearly disqualifying except upon the advice of a licensed and practicing physician. *Taylor v. Iowa Department of Job Service*, 362 N.W.2d 534 (Iowa 1985). No such evidence was presented here.

A single unexcused absence does not constitute excessive unexcused absenteeism. *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 275 N.W.2d 187 (Iowa 1984).

Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). However, a failure to report to work without proper advance notification to the employer is generally considered an unexcused absence, even if it is due to illness.

For two work shifts in a row, the claimant called in an hour or more after his shift began to tell his supervisor that he was not coming in to work. The next day, he called in less than an hour before his shift was scheduled to begin. He did not reach his supervisor directly. He did not have his supervisor's cell phone number. He called and left a message on the main store telephone number. He did not try to directly reach his supervisor again, and did not call the store number again to report his continued absences. Even if all of these absences were due to illness, his failure to properly report each of these absences in advance cause them all to be unexcused and excessive.

The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without proper notice to the employer for three days, the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for three days without giving proper notice to the employer. There is no evidence of good cause attributable to the employer.

DECISION:

The May 11, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. 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.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/pjs