

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMAS L SALAZAR
Claimant

APPEAL NO. 13A-UI-10891-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TSI ENTERPRISES INC
Employer

OC: 08/25/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 17, 2013, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on October 21 2013. Claimant participated. Employer did participate through Sarah Fiedler, Human Resources Generalist, (representative) Charity Stone, Area Manager and Jamie Floker, On Site Supervisor. Employer's Exhibit One was entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at GPC full-time as a fermenter operator beginning on April 10, 2013, through August 24, 2013 when was discharged. The claimant left work due to pain from a prostate infection on August 24. His supervisor, Mike, drove the claimant to his car as he was in too much pain to walk. The claimant adequately let both his supervisor and GPC personnel know that he needed to leave due to illness. He was at work and properly reported his need to leave. The claimant had prior attendance absenteeism issues that were related to his ongoing prostate infection. There is no indication that his prostate infection was a work-related illness or injury. The claimant did not want to quit his job, he was just physically unable to work due to pain and left work. He properly notified on site personnel who were there when he was working of his pain and need to leave. When the employer learned he had left early on August 24, 2013, the claimant was discharged. He did not voluntarily quit.

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.

The claimant did not intend to quit his work when he left early on August 24. He was simply in too much pain to work. Under these circumstances the administrative law judge concludes the claimant was discharged; he did not voluntarily quit.

Iowa Code section 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.

871 IAC 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 of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant told the supervisor at the plant that he was leaving due to pain. That supervisor even drove him to his car because the claimant was in too much pain to walk there. Under these circumstances the administrative law judge concludes the claimant properly reported his absence. His absence is considered excused for the purposes of the unemployment law.

Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The September 17, 2013, (reference 02) decision is reversed. 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

tkh/pjs