

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY S SCHLIE
Claimant

**ANNETT HOLDINGS INC
TMC TRANSPORTATION INC**
Employer

APPEAL 16A-UI-10300-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/28/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(4) – No-call/No-show Absences
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 15, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2016. Claimant participated. Employer participated through IT networks and support manager Aaron Rhinehart. Julie Underwood observed. Jackie Boudreaux of ADP represented the employer.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time (7 a.m. – 6 p.m. Wednesday through Saturday) IT support technician through August 14, 2016. His last day of work was August 6, 2016. He was a no-call/no-show on August 10. Rhinehart left a message for him. On August 11 claimant called at 3:40 p.m. stating that he thought he had food poisoning and would either report to work on August 12 or go to the doctor and let Rhinehart know about his status. No medical documentation was provided. Rhinehart tried calling claimant 16 times and texted once on August 12. Later that day Rhinehart left claimant a message terminating the employment due to no-call/no-show absences and changed door access codes. The next communication from claimant was on August 17 when he called Rhinehart stating the door did not work. Rhinehart told him to listen to his voice mail messages because he was no longer employed after no-call/no-show absences on August 10, 11, 12 and 13, 2016. Claimant argued that he called Rhinehart everyday but there was only one call attempt or message to his cell phone on August 11 and there were no calls to his desk phone, which has voice mail.

The employer's policy provides that no call/no show absences may be considered a voluntary quitting of employment. Rhinehart warned him verbally on May 6, 2016, about failing to call or report for work after the employer called the Jasper County Sheriff to conduct a wellness check. The sheriff had no response at the door until sirens were turned on. Claimant said he had food poisoning then also. No medical documentation was provided then either.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer.

Iowa Code section 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(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's argument he reported all absences is not credible and not supported by the record. Since claimant had more than three consecutive no-call/no-show absences as required by the rule in order to consider the separation job abandonment, the separation was a voluntary quitting of employment. Were it not a voluntary quitting of employment claimant would still be disqualified because of job-related misconduct.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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.

Absences due to *properly reported* illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose

discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). 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).

Claimant's argument he was absent in May 2016, and again for four days in August 2016, due to food poisoning, without medical documentation, is not credible. Excessive absences are not considered misconduct unless unexcused. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further improperly reported and/or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The September 15, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs

NOTE TO EMPLOYER:

If you wish to add the agent name and address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and
http://www.youtube.com/watch?v=_mpCM8FGQoY