

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES L CATLETT
Claimant

PIONEER HI-BRED INTERNATIONAL INC
Employer

APPEAL 16A-UI-11404-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/02/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work by failing to report for three consecutive days and failing to notify his employer of the reason for his absence. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2016. The claimant, James L. Catlett, participated. The employer, Pioneer Hi-Bred International, Inc., participated through Colby Entriken, location manager.

ISSUE:

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 full time, most recently as a production technician, from January 6, 2014, until September 22, 2016, when he was discharged. Claimant last reported to work on September 7. On September 8 and 9, claimant called in and reported that he was ill and could not come to work.

The evening of September 11, claimant was arrested, taken to the Grundy County Jail, and charged with domestic abuse. That night, his wife called in and let the employer know that claimant would not be at work the following day. On September 13 and 14, claimant's wife called in again and let the employer know that claimant would not be at work. Later in the day on September 14, claimant called and spoke to his production supervisor to find out if he still had a job. At that point, the production supervisor informed him that he was still employed. After this conversation, the deputy sheriff contacted Entriken to inquire about claimant's employment status. Entriken confirmed that claimant was still employed. According to the deputy sheriff, at that point claimant was going to remain in jail "for some time to come." It appears these inquiries were made as claimant's employment status affected whether he qualified for a court-appointed attorney. On September 22, the sheriff brought claimant a letter

from the employer stating that claimant was discharged effective that day. Claimant remained in jail until October 3, 2016. Claimant ultimately pled guilty to the domestic abuse charge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

Excessive absences are not considered misconduct unless unexcused. 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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 Iowa Supreme Court recently decided a case addressing a discharge for absences due to incarceration. “[I]nvoluntary incarceration, at least where the charges are dismissed, ... falls within the ‘other reasonable grounds’ for absence contemplated under rule 871—24.32(7).” *Irving v. E.A.B.*, 883 N.W.2d 179, 203 (Iowa 2016). Here, claimant incurred nine consecutive absences due to incarceration. Unlike the claimant in *Irving*, however, claimant pled guilty to the charge for which he was incarcerated. It is reasonable to conclude that claimant acted voluntarily in a way that he knew, or reasonably should have known, would jeopardize his employment. Therefore, claimant’s absences between September 11 and September 22 are unexcused. Claimant was absent nine consecutive days, which is excessive. The employer has established claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

DECISION:

The October 18, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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