

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNIE R FETTERS
Claimant

CRAMER AND ASSOCIATES INC
Employer

APPEAL 19A-UI-04959-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/26/19
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 June 12, 2019, (reference 01) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2019. Claimant participated along with his witnesses Glen Mammon, his step-father and Jasmine Robinson, his daughter. Employer participated through Lori Starkey, Payroll Manager.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as truck driver/operator beginning March 16, 2000 through May 24, 2019, when he was discharged. The claimant had requested and obtained permission from his supervisor to be off work on May 10 and May 13. If an employee is going to be absent from work the employer simply requires that they or someone on their behalf call or text their supervisor or someone in the main office. Reporting any absences to Ms. Starkey either via phone or text is considered an acceptable way for an employee, or someone on their behalf to notify the employer of an absence.

On May 13, 2019 sometime between 7:30 and 8:00 a.m., Ms. Robinson called the employer's office and spoke to Ms. Starkey. She was concerned because no one had seen her father all weekend and she wanted to find out if he was at work that day. Ms. Starkey did not know and told Ms. Robinson she would contact claimant's supervisor and find out and get back to her. Later that day the claimant learned that her father was on vacation and not at work. After speaking to her father, Ms. Robinson called the employer at 2:27 p.m. and reported to them that due to personal issues the claimant would not be into work for the rest of the week. The claimant's absences for the period from May 14 through May 17 were properly reported to the employer. On May 14 the claimant's direct supervisor, Scott Cornelison, called Ms. Robinson

and asked her what was going on why the claimant was not at work. Ms. Robinson told him the same thing that she had already reported to the employer, that the claimant was having personal issues and was not able to come to work.

On May 17 at about 3:30 p.m. the claimant called the owner of the company Mr. Cramer and told him he would be back to work on Monday. Claimant merely reported that he had "gotten into some trouble" and had not been able to come to work. Mr. Cramer told him they looked forward to having him back to work on Monday. Claimant returned to work on May 21 and worked his normal work shift and hours from May 21 through May 24. At the end of the work day on May 24, Mr. Cornelison told the claimant he was being let go from work for having been a no-call/no-show to work for prior week. The claimant's employment did not end for any other reason than the employer believed him to be a no-call/no-show for work for May 14 through May 17. The claimant had never been disciplined previously by the employer for anything.

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.

Under the employer's own rules, a family member or friend may call or text to report the absences of an employee. Ms. Robinson properly reported the claimant's absences for the period from May 14 through May 17, when she called the employer on May 13. Claimant was not a no-call/no-show for work. 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).

The claimant had no prior discipline for any attendance issues at all. He missed work for four days due to his being incarcerated in New York. His absences were properly reported. Under these circumstances given claimant’s prior lack of any issues with attendance the administrative law judge cannot conclude that the employer has established excessive unexcused absences. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 12, 2019, (reference 01) 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/rvs