

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TOYUSI JOHNSON**  
Claimant

**WINDSOR WINDOW COMPANY**  
Employer

**APPEAL 21A-UI-12210-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/28/21  
Claimant: Appellant (2)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On May 8, 2021, the claimant/appellant filed an appeal from the May 4, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2021. Claimant participated at the hearing. Employer participated through human resource representative, Shawna Madonia.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 12, 2020. Claimant last worked full-time in shipping. Claimant worked Monday-Friday 8:00 a.m.-4:30 p.m. but his days and hours would vary when there was additional work that needed to be done. Claimant was separated from employment on March 1, 2021.

Claimant became aware on Sunday, February 14, 2021, his father had died. Claimant notified his supervisor, Eric Verdulla, that he would be absent because he needed to go to Saint Louis, Missouri to sign documents and figure out how to transport his father to Mississippi to be buried. Claimant was absent from work Monday, February 15, 2021- Wednesday, February 17, 2021. Claimant was in contact with his supervisor during this time and kept him informed that he would be gone. Claimant returned to work on Thursday, February 18, 2021 and worked 8:00a.m.-8:30 a.m. Claimant got approval to leave early and the manager, Russ, allowed claimant to leave for the rest of the day. Claimant worked on Friday, February 19, 2021.

Claimant had a discussion with the employer and the employer agreed to give the claimant time off to bury his father. Claimant had to drive to Mississippi to bury his father. Claimant was gone Monday, February 22, 2021, through Friday, February 26, 2021. Claimant was in contact with his supervisor during this time keeping him informed of what was going on with the funeral. Claimant

returned to work on Monday, March 1, 2021. Claimant arrived at work at 7:00 a.m. to begin his shift. When he showed up his supervisor was not there so claimant called him to see why the shift had not started. The supervisor informed claimant the shift did not start until 10:00 a.m. but he could go inside and work on another project. When the claimant went inside he was called into a meeting with human resources. Ms. Madonia, the employer's representative in his hearing, was not present during the meeting and did not have first-hand knowledge of any of the events. During the meeting with human resources claimant was informed that he had been terminated for not calling in or showing up for three days. Ms. Madonia agreed claimant was approved to be on gone for a period of time but could not testify when claimant was supposed to return from the agreed upon leave. Claimant tried to explain to the human resource personnel that he has been in contact with his supervisor, Mr. Verdulla, during his absences but they would not listen to him. Claimant decided to leave the office and went down to his work area to wait for Mr. Verdulla to arrive so Mr. Verdulla could explain the misunderstanding. The employer noticed claimant was still present on the job site and sent personnel to escort him off the job site.

The employer had an absenteeism policy where employees were required to notify their supervisor before work if they would be absent. Employer had a no call, no show policy where if an employee was gone for three consecutive days they were considered to have voluntarily quit. The employer also had a bereavement policy where they would give employees three days off for the death of a parent. The employer would grant additional time if the employee requested it. Claimant did not have any previous verbal or written warnings regarding absenteeism.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:  
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 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 § 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 § 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.

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).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is

reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Further, since most members of management, especially those in human resources, are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's version of events is more credible.

Claimant testified that he found out his father died and was in communication with his supervisor about being absent from work Monday, February 15, 2021-February 17, 2021. The employer's policy is that the employee should communicate their absences with their supervisor. Claimant followed the employer's policy. Furthermore, claimant requested additional time to travel to Mississippi to bury his father and the employer agreed he could take time off. Employer could not testify with specificity when the leave was supposed to end. Claimant clearly had no intention to quit which is evident by him going to work on Monday, March 1, 2021. Further, there was not an overt act of carrying out any intention to quit by claimant. After the meeting with human resources informing claimant he had been terminated for not calling in or showing up for three days, claimant thought he could clear up the mistake when they talked to his supervisor. Claimant went down to his work area to wait for his supervisor, Mr. Verdulla. Mr. Verdulla had information on whether claimant has been in contact with him regarding his absences from work. The employer saw that the claimant was still present at the job site and escorted him off the premises. The claimant has established that he did not voluntarily quit, claimant established that he was in contact with his supervisor and had permission to be gone from work for a period of time to bury his father. Claimant established that he did not go a period of three days of not calling in or showing up for work.

Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." 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, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Claimant was discharged because he was absent from work.

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. 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 employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because his last absence was related to his father's death and he was in contact with the employer no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The May 4, 2021, (reference 1) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

July 29, 2021  
Decision Dated and Mailed

cs/mh