

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THATEDUS WILLIAMS**  
Claimant

**APPEAL NO: 10A-UI-08142-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05/02/10**  
**Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's May 27, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on August 5, 2010. The claimant participated in the hearing. The employer's witness was called and a message was left for her to contact the Appeals Section. The employer's witness did not contact the Appeals Section to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 23, 2010. The claimant's last day of work was in mid-March. The claimant injured his back at work when he slipped and fell. A doctor restricted him from work for about week. After a doctor restricted him from working, the claimant understood the employer granted him time off for his back injury. The claimant thought he would have returned to work in about a week.

While the claimant was off work, law enforcement officials went the employer's business to arrest the claimant for a parole violation. The claimant was arrested and incarcerated on March 24, 2010. He was incarcerated for 24 days. He was released on April 16, 2010.

The claimant contacted the employer after he was released. The employer asked the claimant to come back the following week. On April 23, the employer informed the claimant he no longer had a job because he accumulated too many attendance points while he was incarcerated. The employer allows employees 14 attendance points, and the claimant exceeded this during his incarceration.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant voluntarily quit his employment. Instead, the employer discharged the claimant for excessive, unexcused absenteeism which occurred as the result of his incarceration.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The claimant's violation of his probation resulted in his unexcused absenteeism from March 24 through April 16, 2010. The claimant's leave of absence was for medical reasons. The claimant acknowledged he could have returned to work in about a week after he hurt his back, which would be about the same time he was incarcerated. Based on the facts in this case, the employer discharged the claimant for excessive, unexcused absenteeism which constitutes work-connected misconduct. As of May 2, 2010, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's May 27, 2010 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 2, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css