

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIE D GUYTON**  
Claimant

**HYPRO INC**  
Employer

**APPEAL NO: 12A-UI-04635-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/18/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 17, 2012, reference 01, that held he voluntarily quit without good cause attributable to his employer on March 15, 2012, and benefits are denied. A telephone hearing was held on May 15, 2012. The claimant participated. Karen Touve, HR, participated for the employer.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant first worked for the employer thru a temporary employment firm before he became a full-time machine operator on December 19, 2011 and worked for the employer to March 16, 2012. The claimant knew it was employer policy to call-in or come-in to check on available work each day. Although the employer advises employees in orientation what to do if missing work, it has no written policies. Claimant worked at the employer Cedar Falls, Iowa plant and the home office is in Wisconsin.

Claimant was a no-call no-show to work for one day due to an incarceration, and received a warning on February 16. He asked to change from 3<sup>rd</sup> shift to 1<sup>st</sup> about two weeks prior to employment termination due to child care problems. He repeatedly asked about his request leading up to his last day worked on March 16.

He called the employer prior to the start of his shift on March 19 and March 20 to say he was missing work because he did not have child care. He reported for work on March 21, but was sent home and told by a supervisor he was terminated for being a no-call no-show to work. The employer home-office HR representative believes claimant was a no-call no-show for three consecutive days; March 19, 20 & 21. The employer policy is he self-terminated from employment due to job abandonment that is a voluntary quit.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

The administrative law judge concludes the employer failed to establish claimant was discharged for misconduct due to absenteeism on March 21, 2012.

Claimant offered credible testimony based on dates, times and identifying employer persons that he called to report absences for March 19/20. He reported in person for work on March 21. He was not a no-call no show to work for three days as alleged by the employer that is its basis for termination.

Claimant was discharged when he reported for work on March 21. Although he had missed work for a non-excusable reason (lack of child care), he had tried to resolve the issue by requesting the employer move him to a different work shift and/or arrange for child care. Since the employer did not terminate claimant for absenteeism, job disqualifying misconduct is not established.

**DECISION:**

The department decision dated April 17, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on March 21, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs