

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMAL A WILSON
Claimant

APPEAL NO. 09A-UI-19095-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US INTERMODAL INC
Employer

OC: 11/08/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jamal A. Wilson filed a timely appeal from an unemployment insurance decision dated December 9, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 28, 2010 with Mr. Wilson participating. Human Resources Manager Sharri Noon participated for the employer, US Intermodal, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jamal A. Wilson was employed by US Intermodal, Inc. from April 20, 2009 until he was discharged on or about October 14, 2009. He last worked on September 29, 2009. Mr. Wilson did not work thereafter because of a burn injury on his arm. He left a voice message for his supervisor, T. J. Stricklett on September 29. There was no further contact between the two until Mr. Stricklett called Mr. Wilson on or about October 14, 2009, telling him to return his company uniforms.

The company attendance policy does not require daily notification.

REASONING AND CONCLUSIONS OF LAW:

The fact-finding decision in this case characterized the separation as a voluntary quit. In order to find a voluntary quit, the administrative law judge must find evidence that Mr. Wilson intended to sever the employment relationship. See Local Lodge No. 1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The administrative law judge finds no such evidence. Intention may be presumed if an individual is absent for three consecutive workdays without contact, in violation of a company rule. See 871 IAC 24.25(4). There is no evidence in the record of such a rule. The evidence indicates that the employment ended when Mr. Stricklett contacted Mr. Wilson to tell him to return his uniforms. Such a separation is best characterized as a discharge.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to a medical condition is not considered to be unexcused. The question is whether the employee properly reported the absence to the employer. See Higgins, supra, and 871 IAC 24.32(7). It is clear that the final absences were due to a medical condition. The question is whether the absences were properly reported. Ms. Noon testified that the policy requires daily contact. However, when she read the policy into the record, there was no language requiring daily contact. Mr. Wilson testified under oath of a prior instance in which he had been gone for several days without daily contact. The administrative law judge concludes that the evidence does not establish that Mr. Wilson was required to contact Mr. Stricklett daily. Therefore, since the final absences were due to a medical condition, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 9, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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