

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARGOU LANGAR
Claimant

APPEAL 16A-UI-08396-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 07/10/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 1, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on August 18, 2016. The claimant, Kargou Langar, participated. The employer, Developmental Services of Iowa, participated through Brittany Pritchard, front line supervisor; and Jenni Schwartz, program coordinator. Claimant's Exhibits A and B and Employer's Exhibits 1 through 12 were received and admitted into the record. Claimant objected to numerous exhibits offered by the employer due to a disagreement with the contents of the documents, particularly the circumstances surrounding the warnings he was issued during his employment.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a direct support professional, from December 26, 2012, until July 8, 2016, when he was discharged.

On June 27, 2016, claimant contacted the employer prior to his shift to report that he would not be able to come to work because his car caught on fire. (Exhibit A) Pritchard responded that he needed to call his on-call, Amanda, and let her know. The employer helped claimant find coverage for his shift that day. Claimant texted the following morning at 6:18 a.m. to report that he would not be at work because he was not successful meeting with the dealership and his insurance company the following day. Claimant reports he is still without a car. Pritchard responded to him that evening to let him know that the employer found coverage for his shifts on June 29 and 30. Claimant replied that he would be meeting with the insurance adjustor and the dealer on Monday, which would have been July 4. Claimant testified that he called Pritchard

on June 29 but was unable to reach her. He assumed at that point that she had found coverage for all of his shifts and also assumed that he no longer had a job. On July 6, Pritchard sent claimant a text message and asked him to meet with her and Lauren. Claimant spoke with Lauren and Pritchard on July 8, and he was discharged during this conversation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism. Alternatively, the administrative law judge concludes the evidence supports a finding that claimant voluntarily quit his employment without good cause attributable to the employer. The outcome of either scenario is that benefits are withheld.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

The evidence shows claimant was absent from June 27 through the end of his employment on July 8. In total, he missed nine consecutive days of work. Missing nine consecutive days of work is excessive. Each of claimant's absences was attributable to a lack of transportation. The employer seems to have excused his first absence, on June 27, but each of the subsequent absences is unexcused. Claimant had received previous warnings about attendance related to mandatory meetings as well as his scheduled shifts. Additionally, claimant ceased contact with the employer after June 28, and the employer cannot be expected to track down an employee on an extended unexcused absence to issue him a warning. The employer has established claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld.

Alternatively, this case can be analyzed as a voluntarily quit of employment. 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 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:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the

separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant testified during the hearing that he assumed he was no longer employed because Pritchard had not contacted him after June 28. He also testified that he believed his lack of transportation would disqualify him from employment with the employer, as each employee was required to have a vehicle. Regardless, the evidence supports a conclusion that claimant mistakenly believed he no longer had employment, leading him to stop coming to work. Claimant's decision to stop reporting to work because he assumed he was no longer employed was job abandonment. Benefits are withheld.

DECISION:

The August 1, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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