

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WENDELL L JONES
Claimant

APPEAL 17A-UI-04496-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 04/02/17
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 April 21, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work by failing to report to work for three consecutive work days and failing to report these absences. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2017. The claimant, Wendell L. Jones, participated. The employer, CRST Van Expedited, Inc., participated through Carrie Bettcher, Human Resources Supervisor. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 truck driver, beginning on February 17, 2016. Claimant last reported to work on December 23, 2016. On December 28, claimant was arrested in Las Vegas, Nevada. Claimant testified that he got pulled over, and the police discovered he had an outstanding warrant from 2012 that claimant believed had been dismissed. Claimant provided evidence that on December 28, he was booked into the Clark County Detention Center. Claimant had his sister call the employer on December 30 to report that claimant was incarcerated. On January 2, claimant's sister contacted the employer again to report that claimant would not be getting out of the detention center in the near future. The employer told claimant's sister that claimant should contact them once he was released.

Claimant testified that he was released in late March 2017. Claimant contacted the employer at that time, and he was told that he no longer had a job. Bettcher testified that the employer has a policy stating that any employee who fails to come to work or make contact for thirty

consecutive calendar days will be released from employment. The employer terminated claimant's employment in its system in early February 2017, after thirty days of failing to report to work and failing to contact the employer. Claimant's charges are still pending, and he is scheduled to return to court in June 2017. Claimant testified that he is currently living in Texas and unable to leave the state. Claimant denies that he intended to quit his job with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for excessive, unexcused absenteeism.

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.

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); see also Iowa Admin. Code r. 871-24.25(35). 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Here, there is no evidence that claimant intended to quit his employment. Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden of proof to establish disqualifying misconduct.

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.

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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

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.*

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 claimant did not present credible testimony. Specifically, the administrative law judge does not believe that claimant though his old, outstanding warrant was dismissed. The administrative law judge can contemplate a scenario in which claimant forgot about the outstanding warrant, or one in which claimant believed he would not be stopped by the police so the warrant would not lead to his arrest. However, it is difficult to think of any situation in which an individual mistakenly believes that a charge has been dismissed when it remains.

Claimant was absent from work for approximately one month before the employer discharged him. This is excessive absenteeism. As claimant's criminal charges are still pending and there is no credible evidence that they are going to be dismissed imminently, it does not appear that claimant's absences are excused. Benefits are withheld.

DECISION:

The April 21, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant did not quit, but he 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

lj/scn