

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THAER F TAHA
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL 16A-UI-06956-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/29/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 20, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for excessive, unexcused absenteeism. The parties were properly notified of the hearing. An in-person hearing was held on July 12, 2016, at the Iowa Workforce Development UI Appeals Bureau hearing room. The claimant, Thaer Taha, participated. The employer, Bridgestone America's Tire, participated through Jim Funcheon, division human resources manager; Tom Barragan, human resources section manager; and Lance Dare, supervisor in shipping and receiving. Claimant's Exhibit A and Employer's Exhibits 1 and 2 were received and admitted into the record without objection.

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 as a production worker from June 20, 2011, until this employment ended on May 13, 2016, when he was discharged for failing to report to work for seven consecutive workdays.

In February 2016, claimant talked with Dare and reported he would need a leave of absence to travel to Jordan later in the year. Dare told him he would need to speak directly with Barragan. Claimant said he would do this. In March 2016, claimant suffered an injury. He received the accident and sickness benefit from the employer and went on approved medical leave. According to claimant's most recent "Accident/Sickness Status Report," which he submitted to the employer on April 4, 2016, claimant was excused from work through May 2, 2016. (Exhibit 1)

On April 5, 2016, claimant contacted Dare on his cell phone and reported that he needed a leave of absence so he could travel to Jordan. At that time, Dare told claimant he needed to

contact Barragan, and claimant said he would do this. Dare then went to Barragan and reported that he had an employee who had an issue requiring Barragan's attention. Barragan and Dare attempted to contact claimant via telephone, but he did not answer so they left a message for him. Barragan never received a call back from claimant. While claimant testified that he left Barragan multiple messages, Barragan denies ever receiving a message from him.

Claimant provided telephone records showing he placed calls to the employer's main line on April 5; April 6; May 2; and May 16. (Exhibit A) In claimant's May 2 telephone message, he reported that he was out of the country. Claimant testified he also stopped by the employer's location on April 6 and 8, but he was not allowed to go inside and talk to anyone. Barragan testified that if an employee reports to the guard shack and asks to speak with someone in HR, the guard will call up to HR and get authorization to allow the person inside. Claimant left for Jordan on April 9, 2016. He returned to the United States on May 28, 2016.

If an employee is going to be on medical leave for more than 30 days, he must re-certify his accident and sickness benefit. This re-certification is required every 30 days. (Exhibit 2, page 10) Claimant never re-certified his accident and sickness benefit before it expired on May 2, 2016. Claimant received the accident and sickness benefit in 2013, and he took approximately 45 days of leave at that time. Funcheon testified claimant properly re-certified his accident and sickness benefit during that time.

The employer mailed claimant a certified letter on May 13, 2016, notifying him that he was discharged for failing to report to work or call in for seven days. This infraction, which the employer referred to as a "seven-day no-report," is defined in the employer's contract with United Steelworkers and is covered in employee orientation. It does not appear claimant had ever been warned for similar conduct in the past.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for excessive, unexcused absenteeism. In the alternative, claimant voluntarily quit his employment without good cause attributable to his employer. Benefits are withheld.

Discharge

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.

Here, claimant was absent for seven consecutive work days. This amounts to excessive absenteeism. His absences were due to his decision to leave the country for personal reasons. This is not reasonable grounds that would excuse his absences. Additionally, it does not appear that claimant properly reported these absences to the employer. Even if claimant had left the voice messages for Barragan explaining that he was out of the country on vacation, he did not have approval to take vacation time. Claimant never submitted documentation trying to re-certify the accident and sickness benefit and extend his approved leave beyond May 2, 2016. Even if he had done that, it is questionable whether claimant could use protected medical leave to take a vacation. If this separation is viewed as a discharge from employment, the employer has met its burden of showing claimant was discharged for disqualifying misconduct. Benefits are withheld.

Voluntary Quit

Alternatively, this separation could be viewed as claimant abandoning his job. 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(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:

(25) The claimant left to take a vacation.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant failed to report to work upon expiration of his approved medical leave, and he failed to report his absences to the employer. While claimant may have had good personal reasons for traveling to Jordan, it was not for a good cause reason attributable to the employer. If this separation is viewed as a voluntary quit, the claimant has not shown a good cause reason attributable to the employer that would justify ending the employment. Benefits are withheld.

DECISION:

The June 20, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. 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 Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs