

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RODNEY J JACKSON
2028 – 4TH LOT 41
BOONE IA 50036

SAUER-DANFOSS (US) COMPANY
2800 E 13TH ST
AMES IA 50010

Appeal Number: 04A-UI-05034-RT
OC: 04-04-04 R: 02
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Rodney J. Jackson, filed a timely appeal from an unemployment insurance decision dated April 28, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 26, 2004, with the claimant participating. Tim Hill, Human Resources Team Leader, and Dennis Knight, Team Leader in the Warehouse, participated in the hearing for the employer, Sauer-Danfoss (US) Company. This appeal was consolidated with appeal number 04A-UI-05035-RT for the purposes of the hearing with the consent of the parties. Employer's Exhibits 1 and 2 were admitted into evidence.

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: The claimant was employed by the employer as a full-time operations technician from March 25, 1996 until he voluntarily quit on February 9, 2004. On that date the claimant came to work and was told by coworkers that he would be fired. He then left and has not returned to work. The claimant was not told by anyone in a position of authority that he was fired or that he would be fired. He just heard rumors that he would be fired and he left. The claimant quit because of his psoriasis condition, but his physician did not require or inform the claimant that he had to quit. The cause of the claimant's psoriasis condition is undetermined and there is no evidence that it is related to his work. The claimant did ask the employer for an accommodation to stay away from chemicals. The claimant was able to do so and the employer met that accommodation. The claimant asked for no other accommodation. The claimant never indicated or announced an intention to quit to his employer prior to the day of his quit.

The claimant was absent on February 4, 5, and 6, 2004 because of depression resulting from his psoriasis condition. The claimant did not inform the employer of any of those absences. The employer has a policy in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, and of which he was aware, that the claimant needed to inform the employer by calling the leader before the claimant's shift was to start. The claimant's leader at the time was Dennis Knight, Team Leader in the Warehouse, and one of the employer's witnesses. The claimant was absent on February 3, 2004 because of car trouble, but he did properly report this absence. The claimant went to work on February 2, 2004, but left because of a headache. He did not inform anyone in management that he was leaving. He simply told other employees that he was leaving. The claimant had no permission to leave work early that day. The claimant was also absent on March 3, 4, 5, and 6, 2003, again because of his depression. Again, the claimant did not call in and inform the employer of any of these absences. The claimant did have a doctor's note for March 3, 2003. The claimant's absences are also set out in Employer's Exhibit 1.

The claimant received a written corrective action for his attendance on March 12, 2003, as shown at Employer's Exhibit 2. That document says that a failure to comply with the agreement will be cause for further disciplinary action, up to and including termination. The claimant also received two other written corrective actions; one on January 26, 2001 and one on June 3, 1999.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 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.

871 IAC 24.26(6)b, (6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

871 IAC 24.32(1)a, (7) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of

employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 claimant testified that he, in effect, voluntarily left his employment. The claimant further testified that he left his employment because of his psoriasis condition. However, the claimant also testified that his physician did not inform him that he had to quit. There is no evidence that the claimant's psoriasis condition was related to his employment. The claimant stated that it was an undetermined cause. The claimant has failed to present competent evidence showing adequate health reasons to justify his termination. The claimant did inform the employer of his psoriasis condition and asked to be kept away from chemicals, and the employer accommodated the claimant and he was able to stay away from chemicals. The claimant requested no other accommodation. The claimant never indicated or announced an intention to quit to the employer if any concerns about his condition were not addressed by the employer. There is also no evidence that the claimant ever has recovered and returned to work and offered to go back to work and no suitable work was available. In fact, the claimant testified that he had not returned to work.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. For the reasons set out above, the administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant has failed to demonstrate compliance with either of the rules noted above for separations because of illness, either employment-related separations or non-employment-related separations. Therefore, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The employer's witnesses testified that the claimant was discharged. Even assuming that the claimant was discharged, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and he

would still be disqualified to receive unemployment insurance benefits. The evidence establishes that the claimant had three absences in a row in February 2004, which he did not properly report to the employer. The employer has a policy in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, and of which he was aware, requiring that an employee who is going to be absent notify the leader before the shift starts. The claimant conceded that he did not do so on those three days. The claimant testified that he did not do so because of depression arising out of his psoriasis condition. The administrative law judge is not without sympathy for the claimant, but believes that the claimant could have, and should have, at least called the employer to notify the employer of his absences. The claimant did not do so. The year before, the claimant had had four absences in a row, again for the same reason and did not inform the employer and received a written corrective action, as shown at Employer's Exhibit 2, informing the claimant that a failure to comply with the written warning would be cause for further discipline, up to and including termination. The administrative law judge does not understand how the claimant could go almost a year without unreported absences and then have three more in a row. The evidence establishes that on February 3, 2004, the claimant was absent for car trouble and he properly reported this absence. The claimant did, and could, at least on some occasions, properly report his absences. The evidence also establishes that the claimant had two prior written warnings, on January 26, 2001 and June 3, 1999. Finally, on February 2, 2004, the claimant went to work but then left early because of a headache and did not inform any management persons, but just left work after telling some coworkers. It appears to the administrative law judge that the claimant was not too concerned about informing the employer of his absences. Accordingly, the administrative law judge concludes that the claimant's absences were not for reasonable cause, and even if for reasonable cause, were not properly reported and were excessive unexcused absenteeism and disqualifying misconduct. Therefore, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and he would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision dated April 28, 2004, reference 01, is modified. The claimant, Rodney J. Jackson, is not entitled to receive unemployment insurance benefits, because he left work voluntarily without good cause attributable to the employer

b/b