

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOBY J GRAFTON
Claimant

APPEAL NO. 13A-UI-02827-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INC
Employer

OC: 02/03/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 1, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 5, 2013. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

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 bulk loader on a swing shift (1st, 2nd, and 3rd shift rotating on a complicated schedule) from August 26, 2010 and was separated from employment on February 6, 2013. He has primary custody of his two children under the age of five. He was tardy that day after he was up late with the children, who were ill. He was not sleeping in the room where the alarm was set. He did not have childcare available for them when they were ill. Their mother is not reliable and their grandfather is not always available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not generally considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Shift work is well known at the lay person level to cause difficulty with sleep schedules and rotating shift work exacerbates those issues further. Furthermore, because the final absence was related to the illness of young minor children, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

DECISION:

The March 1, 2013 (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css