

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD T WALKER
Claimant

APPEAL NO. 08A-UI-11580-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/15/08 R: 04
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Howard Walker filed an appeal from a representative's decision dated December 8, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on December 23, 2008. Mr. Walker participated personally. The employer opted not to participate.

ISSUE:

At issue in this matter is whether Mr. Walker was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Walker began working for Tyson on October 1, 2007 and worked full time as a production employee. After an auto accident on or about October 12, 2008, he was arrested and charged with not having an Iowa driver's license and for not having insurance. He was confined to jail for 30 days and notified the employer of this fact.

Mr. Walker was released from jail on November 17 and went to Tyson on November 18. He was notified that he no longer had a job because of his attendance. The employer tracks attendance on a point system. An individual is subject to discharge when he reaches 12 points. Mr. Walker had at least 15 points when he was notified he no longer had a job. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

Mr. Walker lost his employment with Tyson because he was in jail and unable to report to work. An individual who leaves employment because of incarceration is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(16). Since there was no other reason for the separation, benefits are denied.

Even if the administrative law judge were to conclude that Mr. Walker was discharged, he still would not be entitled to job insurance benefits. An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. 871 IAC 24.32(7). Properly reported absences that are for reasonable cause are considered excused absences. Absences caused by matters of purely personal responsibility, such as incarceration, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Mr. Walker missed a month of work due to his incarceration. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. Therefore, even if the separation were to be deemed a discharge, Mr. Walker would be disqualified from benefits as his attendance constituted substantial misconduct.

DECISION:

The representative's decision dated December 8, 2008, reference 01, is hereby affirmed as to result. Mr. Walker left his employment with Tyson for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css