

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY H SNAPP**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 17A-UI-10024-NM-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 09/17/17**  
**Claimant: Appellant (2R)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 29, 2017, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 17, 2017. The claimant participated and testified. The employer participated through Co-Manager Sabrina Wohlford.

**ISSUE:**

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 as a sales associate from February 13, 2016, until this employment ended on August 9, 2017, when he was separated.

On July 5, 2017, claimant went to the personnel office and requested a leave of absence for treatment related to alcohol addiction. Personnel staff offered to contact Sedgewick, the employer's short-term disability provider, on claimant's behalf and drive him to the bus station so he could go to the treatment facility. Following a detox period, claimant checked into treatment on July 19, 2017. At this time, his phone was taken away as part of the treatment program. For 30 days claimant was not allowed to receive calls, but could make calls under limited circumstances. During this time, claimant would regularly contact Sedgewick regarding the status of his short-term disability claim. Sedgewick regularly informed claimant that his claim was still pending and identified additional information it needed. Sedgewick had initially told claimant he needed to have all the proper documentation submitted by July 31, 2017, but later extended that date to August 7, 2017.

On August 2, 2017, the employer received notice from Sedgewick that claimant's short-term disability claim was denied. The employer attempted to contact claimant via telephone every day for a week. The employer also sent claimant a certified letter, though it was returned as undeliverable. Claimant testified he did have his mail forwarded, but, because he listed the treatment facility's street address rather than PO Box, he did not receive any of the mail he was sent in July, August, and September. Once claimant became aware of this issue, he fixed it immediately. When the employer had no contact from claimant by August 9, he was separated from employment.

On or around August 17 or 18, claimant learned his short-term disability claim had been denied. Claimant understood this to mean he would not receive any income while he was in treatment but, based on his conversation with personnel staff and reading of the employee handbook, believed he was on approved leave without pay. Claimant testified he had never been told he needed to do anything further to contact the employer regarding his leave, should his short-term disability claim be denied. Claimant continued in treatment under this belief until sometime in September 2017, when he went to fill a prescription. Claimant was told by the pharmacy that his insurance company would not cover the prescription. When claimant called to ask why, he was told he had been separated from employment in August.

#### **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 no disqualifying reason.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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). Claimant requested a leave of absence on July 5, 2017. Claimant's short-term disability claim was denied, but he believed he was on leave without pay. Claimant told management on July 5 he was requesting leave for treatment. While the employer was unable to successfully contact claimant during the first month of his recovery, they nevertheless knew he was on leave and why. Claimant's assumption that he was on an approved leave of absence without pay following the denial of his short-term disability claim was reasonable given the circumstances.

At most, claimant's separation from work from July 5 through August 9 was a temporary absence while he was medically unable to work. However, employer initiated the end of that voluntary leave period by terminating the employment prior to his release to return to work based upon a calendar measurement rather than the treating professional's opinion. The Iowa Court of Appeals has informally interpreted the Iowa Code §96.5(1) subsection (d) exception not to require a claimant to return to the employer to offer services after a medical recovery if the employment has already been terminated. *Porazil v. IWD*, No. 3-408 (Iowa Ct. App. Aug. 27, 2003). Because claimant was still on indefinite, but temporary, medical leave and reasonably believed he had communicated his status with the employer, which indicated his intention to return to the employment when able to do so, and employer terminated the employment relationship before his release, the separation became involuntary and permanent and is considered a discharge from employment.

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(1)a 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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.

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, supra*.

An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. As employer is no doubt aware, alcoholism is considered a disease or illness. Claimant was absent from work because he was seeking treatment for alcohol addiction. Claimant notified the employer of such prior to entering treatment and was not made aware of any additional steps he needed to take. Because the final absence for which he was discharged was related to properly reported illness related to his alcoholism, for which he was seeking treatment, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible.

At the time of the hearing, claimant provided information indicating he may still be in treatment. This raises the issue of whether claimant is able to and available for work. This issue must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The September 29, 2017, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld shall be paid to claimant, pending the outcome of the issue of claimant’s ability to and availability for work as outlined below.

**REMAND:**

The issue of claimant’s ability to and availability for work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn