

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L WISECUP**  
Claimant

**APPEAL NO. 13A-UI-00723-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE PRINTER INC**  
Employer

**OC: 12/16/12  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 10, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 20, 2013. Claimant participated. Employer participated through senior manager of human resources, Janet Stice. Claimant's Exhibits A and B were received. Employer's Exhibits 1 and 2 were received.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 bindery operator from February 3, 2012 and was separated from employment on December 4, 2012. From November 18 through 20 he was hospitalized for heart problems. While there his treating addiction therapist recommended he seek outpatient treatment and if that did not work he should be treated as an inpatient. On November 20 he admitted to Stice that he had abused prescription drugs and alcohol the night of November 17 and that was part of what precipitated his hospitalization after he called the employer on November 18 and said he had woken up after having been passed out on the floor. He began outpatient treatment on November 21. On December 4 he spoke with Stice and told her he needed to be absent for up to 30 days to go into inpatient alcohol treatment. She told him he was not eligible for Family Medical Leave Act (FMLA) leave because he had not yet worked there a year. She testified at hearing the decision would have been the same for a 30-day treatment of his heart condition. The same day she wrote claimant a letter telling him because he would miss work for 30 days, the employer would fill his position, he could reapply for work in the future, and his medical insurance would end on January 1, 2013. (Claimant's Exhibit B) He was transferred to inpatient treatment on December 5 through December 22. He had been

warned about attendance on November 21, 2012. (Claimant's Exhibit A, Employer's Exhibit 1) The employer's Drug-Free Workplace policy provides for leave, not subject to FMLA requirements, for substance abuse treatment and return to work dependent on successful completion of the treatment regimen. (Employer's Exhibit 2, p. 36)

### **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 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 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(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.

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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Since the claimant told Stice he needed to seek medical treatment for addiction for a specific period of time, this indicated his intention to return to work when his medical addiction status improved. Thus, claimant did not quit but was discharged and the burden of proof falls to the employer to establish disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot

constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. 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 employer needed an employee to perform the job duties and could not allow him to miss work for 30 days whether the absence was related to drug and alcohol treatment and rehabilitation or for a heart condition. However had claimant worked there two more months, he would have been eligible for FMLA leave, which would have protected his job. Furthermore, the employer's policy allows for absences for rehabilitation treatment with a return to work upon successful completion, but the employer terminated the employment relationship before claimant established his successful completion. The employer has failed to establish misconduct by the most recent absences for hospitalization for his heart condition or for the intended absences for drug and alcohol treatment and rehabilitation. Benefits are allowed.

**DECISION:**

The January 10, 2013 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible and the benefits withheld shall be paid.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs