

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THAD A GUSAK
Claimant

APPEAL NO: 14A-UI-04479-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 04/06/14
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 28, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated at the May 19 hearing. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2013. He worked full time as a night maintenance employee. The claimant understood that according to the employer's attendance policy, an employee would be discharged if he accumulated 14 attendance points. The claimant also understood that when an employee was unable to work as scheduled, he was required to call the employer's automated phone line and leave a message that he was unable to work as scheduled.

The claimant was arrested the morning of March 24 for violating a no-contact order. He could not make bail and had to stay in jail until he appeared in court. The claimant was in jail for two weeks or until April 7.

After the claimant was arrested, he tried to call the employer's automated phone to report he was unable to work because he had been arrested. When he could not get through on the automated phone line, he left messages for his immediate supervisor informing him that he was in jail and would not be released until April 7. On March 28 the claimant talked the maintenance superintendent and explained why he was not at work and when he could be released from jail.

The claimant then learned it was possible the human resource department had not been notified about his situation.

The claimant received the employer's March 31 letter informing him that he no longer had a job because he had not properly notified the employer he was unable to work the week of March 24, 2014. After the claimant was released from jail, he talked to the employer's human resource representative who confirmed the claimant was discharged. The claimant filed a grievance, but the employer did not re-instate the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant voluntarily quit his employment. Instead, the employer discharged him.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer's March 31 termination letter informed the claimant he was discharged for failing to properly notify the employer for five days that he was unable to work. Since the claimant knew the employer required employees to call an automated phone line when they were unable to work and the claimant did not, the employer had justifiable business reasons for discharging the claimant. Even though the claimant asserted he left messages for his immediate supervisor, he does not know if his immediate supervisor worked or even received his messages. On March 28, the claimant informed the maintenance superintendent why he was unable to work and that he would not be released from jail before April 7. The employer discharged the claimant for excessive unexcused absenteeism.

Even though the claimant's cell mate may have made arrangements to have his absences excused when he was in jail, the claimant did not make such an arrangement with the employer. The claimant's two-week time in jail amounts to work-connected misconduct. As of April 6, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 28, 2014 determination (reference 02) is modified, but the modification has no legal effect. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons that amount to work-connected misconduct. As of April 6, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css