

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YASIN O OSMANALI
Claimant

APPEAL NO. 11A-UI-12762-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEVIN MCCAIN
AGRI STAR MEAT & POULTRY LLC
Employer

OC: 04/17/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Yasin O. Osmanali filed a timely appeal from an unemployment insurance decision dated September 20, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held October 19, 2011 with Mr. Osmanali participating. Payroll and Human Resources Assistant Laura Loney participated for the employer, Agri Star Meat & Poultry, LLC. Sirad Dahir served as interpreter.

ISSUES:

Was the separation a quit or a discharge?
Was the separation a disqualifying event?

FINDINGS OF FACT:

Yasin O. Osmanali was hired by Agri Star Meat & Poultry LLC on July 19, 2010. He was injured at work on August 18, 2011 when a knife pierced his thigh. He was carried to the nurse's office. He was then sent home. Mr. Osmanali called the employer over the next two workdays to report that he would be unable to work. He was discharged when he returned to the plant on August 22, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first step in analysis is to characterize the separation. The employer witness testified that she had no record that Mr. Osmanali had called in during the days that he was absent. The employer characterized the separation as job abandonment. The claimant testified that he called the employer daily. He also testified that the plant nurse and his supervisor knew of the injury at the time that he left. The administrative law judge finds the claimant's evidence to be the more credible. The employer initiated the separation.

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(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.

The employer has the burden of proof. See Iowa Code § 96.6-2. While excessive unexcused absenteeism constitutes misconduct, absence due to a medical condition is not held against an employee for unemployment insurance purposes provided the employee properly reports the absence to the employer. See 871 IAC 24.32(7). The greater weight of evidence is that the employer knew full well the reason for the claimant's absences and that the claimant did what he could do to keep the employer apprised of the situation. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 20, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs