

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTELLIOS D CAGE

Claimant

APPEAL NO. 07A-UI-04802-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Martellios Cage filed an appeal from a representative's decision dated May 7, 2007, 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 May 30, 2007. Mr. Cage participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Cage 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. Cage was employed by Tyson from August of 2006 until April 11, 2007 as a full-time production worker. He was discharged for exceeding the allowable number of attendance points. An individual is subject to discharge when he reaches 14 points. Mr. Cage had 14.5 points at the time of discharge.

Most of Mr. Cage's absences were due to transportation issues. He had a ride to work when he first began the employment but, the individual he rode with went to a different shift. Mr. Cage was late reporting to work on three or four occasions in 2007 due to transportation issues. His final absences on April 9 and April 10 were due to lack of transportation. Mr. Cage had notice of his point status and had received warnings about his attendance. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported

absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Cage was on notice that his attendance was jeopardizing his continued employment. In spite of the notice, he continued to accrue attendance points. Absences caused by matters of purely personal responsibility, such as transportation, are not excused absences. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). By his own admission, Mr. Cage's absences were mostly due to lack of transportation. He acknowledged that he was late on three or four occasions in 2007 due to transportation issues. His final two absences on April 9 and 10 were due to lack of transportation.

The employer did not participate in the hearing to provide specific dates on which Mr. Cage was either late or absent. However, his testimony establishes a basis for disqualification. He was late on at least three occasions in 2007 due to transportation. The tardiness, combined with his two consecutive unexcused absences of April 9 and 10, establishes five periods of unexcused absenteeism during the four months he worked in 2007. The administrative law judge considers this sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the above reasons, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 7, 2007, reference 01, is hereby affirmed. Mr. Cage was discharged by Tyson for misconduct in connection with his employment. 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/pjs