

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEMIR S IBRAHIMOVIC
Claimant

APPEAL NO. 12A-UI-01179-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**OC: 12/18/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Beef Products, Inc. filed a timely appeal from a representative's decision dated January 23, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 27, 2012. Although duly notified, the claimant did not participate. The employer participated by Ms. McKenzie Harris, Human Resource Coordinator, and Ms. Jennifer Stubbs, Human Resource Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant was employed by Beef Products, Inc. from September 19, 2011 until December 28, 2011 when he was discharged from employment. Mr. Ibrahimovic worked as a full-time laborer and was paid by the hour. His last day worked was November 18, 2011.

The claimant was discharged on December 28, 2011 when he requested a leave of absence due to illness and was determined not to be qualified because of the length of time that he had been employed by the company. The claimant had been calling in sick due to illness and the employer was not willing to continue the employment relationship based upon the number of absences that the claimant had had during his short period of employment and because the claimant still was ill and was not able to return to work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused. The Court further held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

In this case the evidence establishes the claimant was discharged because he had been absent due to illness that was properly reported and because the claimant continued to be ill and unable to report to work as of December 28, 2011.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant had been ill and properly reported his absence and continued to be ill at the time that the employer elected to discharge the claimant from employment. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 23, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs