

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERTO MARTINEZ
Claimant

APPEAL NO. 06A-UI-11509-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 10/29/06 R: 03
Claimant: Respondent (1/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Beef Products, Inc. filed a timely appeal from an unemployment insurance decision dated November 27, 2006, reference 05, that allowed benefits to Alberto Martinez. After due notice was issued, a telephone hearing was held December 18, 2006 with Mr. Martinez participating. Human Resources Manager Rick Wood participated for the employer. Ike Rocha served as interpreter.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Alberto Martinez was employed as a laborer by Beef Products, Inc. from September 2006 until he was discharged October 30, 2006. Mr. Martinez was injured and missed several days of work. He properly reported his absences to the employer. He returned with medical restrictions. The employer was unable to wait for the restrictions to be removed and so discharged him for unsatisfactory attendance during his probationary period.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

Although excessive unexcused absenteeism is misconduct, absence due to medical reasons properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence establishes that Mr. Martinez was discharged for poor attendance. While this may constitute a valid reason for a discharge, poor attendance in itself does not constitute disqualifying misconduct. The evidence here is that Mr. Martinez properly reported his absences which were for medical reasons. No disqualification may be imposed.

The issue of whether Mr. Martinez is medically able to perform any kind of work at this time was raised for the first time in the hearing. This issue must be remanded to the Unemployment Insurance Services Division for initial fact finding.

DECISION:

The unemployment insurance decision dated November 27, 2006, reference 05, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The issue of whether Mr. Martinez is medically able to work at this time is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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