IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DERRICK H ROBERTS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 09A-UI-05687-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 03/15/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Derrick H. Roberts (claimant) appealed a representative's April 1, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2009. The claimant participated in the hearing. Will Sager appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 5, 2007. He worked full time as a production worker in the employer's Storm Lake, Iowa, pork slaughter facility. His normal schedule was to work on the second shift, 3:00 p.m. to 11:30 p.m., Monday through Saturday. His last day of work was March 11, 2009. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a 14-point attendance policy. Prior to March 9, the claimant was at 13.5 points. He had most recently received a warning on September 9 advising him that he was at 10.5 points as of a September 2 absence. He was then additionally absent on September 3, September 4, and September 5. Of the 13.5 points, six were due to two no-call, no-shows, two were due to transportation issues, and one was due to two tardies for personal issues. An additional half-point was for a tardy due to a family member being hospitalized. Two more points were due to absences reported as due to personal business, of which one or both might have been due to personal illness.

The claimant's grandmother passed away and he was granted three days of bereavement leave to go the funeral. He was therefore off with no points on March 5, March 6, and March 7. He had a flown out of and into Omaha to attend the funeral; the Omaha airport is approximately

three hours from Storm Lake. He had a flight back into Omaha at approximately 10:00 a.m. on March 9, and he had arranged for an acquaintance to pick him up at that time. This would have allowed him a few hours leeway getting back in time for his shift at 3:00 p.m. However, the acquaintance was detained. At about 12:00 p.m., the claimant called the employer to report he would be absent, as he was still at the airport. The acquaintance arrived sometime thereafter, and the claimant got back to Storm Lake at approximately 5:30 p.m. However, he did not attempt to report for work late at that point.

As the claimant missed the entire shift and it was not prearranged, under the employer's attendance policy the absence was assessed as three points. A point from prior to March 8, 2008 must have fallen off the attendance tally, since with the addition of these three points the employer calculated the claimant as being at 15.5 points. As a result of reaching and passing the 14-point level, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). The claimant's final full absence was not excused and was not due to illness or other reasonably avoidable grounds. The claimant had prior unexcused absences and previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 1, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 11, 2009. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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