

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCOS LARIOS
Claimant

APPEAL NO. 09A-UI-15744-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 09/27/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 15, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 23, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Shirley Larios. Kris Travis participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from January 4, 1993, to August 28, 2009. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharged if they had five absences without notice to employer or 14 attendance points (1 point assessed for a properly reported absence and 3 points for an unreported absence).

The claimant was taken into custody while he was at work by police on an arrest warrant issued by the state of Missouri on a drug-related offense. He was held in the Washington County, Iowa, jail for two weeks and then was transported to jail in Missouri. After about a week in jail, the claimant was released on September 24, but he was not able to get back to Iowa until Friday, September 25. The claimant asked a relative who worked for the employer to get a message to them about his incarceration, but the message was not given to management with the employer.

The employer discharged the claimant on September 3, 2009, based on his having five unreported absences from August 30 through September 3, 2009.

The claimant reported to work on September 28, 2009, and was notified that he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged for work-connected misconduct because he was absent from work for unexcused reasons and his absences were not properly reported to the employer.

DECISION:

The unemployment insurance decision dated October 15, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw