

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN A MALONE

Claimant

TYSON FRESH MEATS INC

Employer

APPEAL NO. 13A-UI-10512-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 13, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism and tardiness on August 21, 2013, and benefits are denied. A hearing was held on October 8, 2013. The claimant did not participate. Steve Widler, Warehouse Manager, participated for the employer. Official Notice of the employer 54 pages of exhibit(s) was taken in this matter.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on October 27, 2007 and last worked as a full-time warehouse employee on August 21, 2013. The claimant received the employer attendance policy that provides for progressive discipline as a person accumulates violations. There are three stages of discipline leading to termination at 14 points for an employee as counted in a one-year period.

The employer issued claimant progressive discipline for accumulating attendance points on October 30, and November 12, 2012, and on August 14, 2013. The latest warning put claimant at 10 ½ points.

Claimant was released to return to report for work on August 19 and 20. He was a no-call/no-show to work both that meant he was at 18 ½ attendance points. The employer did not believe claimant excuses for lack of transportation and personal cell phone as excuses, and it terminated claimant on August 21 for excessive absenteeism.

Claimant provided a telephone number to UI Appeals to be called for the hearing. The judge called the number three times and got a recording the mail box was full and no message could be left.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(7) 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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on August 21, 2013, for excessive "unexcused" absenteeism.

The employer followed its attendance policy by issuing three stages of progressive discipline to let claimant know he was nearing the termination threshold at 14 points. When claimant failed to call in and report for scheduled work on August 19/20, he accumulated six additional points that put him well over the 14-point threshold with 18 ½ points. Job disqualifying misconduct is established.

DECISION:

The decision of the representative dated September 13, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 21, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs