

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS DYAR
Claimant

APPEAL NO: 09A-UI-02951-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 11-02-08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 20, 2009. The claimant participated in the hearing. The employer faxed a statement indicating it was unable to participate but did not object to the admittance of the claimant's exhibits. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time quality assurance technician for West Liberty Foods from July 31, 2008 to January 24, 2009. The employer's attendance policy states that employees will be terminated upon reaching 10 attendance occurrences. The occurrences drop off after one year. The claimant was absent due to properly reported illness February 11, 12 and 13, 2008, and received one point because he provided a doctor's note for an absence of at least two consecutive days; March 6, 2008, he received one-half point for an early out; April 16 and 17, 2008, and received one point because he provided a doctor's note for an absence of at least two consecutive days; June 24 and 25, 2008, and received one point because he provided a doctor's note for an absence of at least two consecutive days; July 14, 2008; September 9, 2008; November 3, 2008; November 11, 2008; December 10, 11 and 12, 2008, and received one point because he provided a doctor's note for an absence of at least two consecutive days; and January 7, 2009, for a total of nine and one-half points (Claimant's Exhibits A and B). On January 23, 2009, the claimant arrived at the time clock at 8:00 a.m. but had trouble clocking in on the new system and consequently was not able to clock in until 8:01 a.m. (Claimant's Exhibits A and B). He immediately told his supervisor about the problem and did not hear anything further until after working four hours January 24, 2009, at which time he was called to the human resources department and notified he exceeded the allowed number of attendance points and his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness

cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Nine and one-half of the claimant's ten attendance points were due to properly reported illnesses. He received the remaining half-point, which was the final incident, for being one minute tardy January 23, 2009. Under these circumstances the administrative law judge concludes that one questionable incident of unexcused absenteeism does not rise to the level of excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 16, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css